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ST. PAUL

TRANSCRIPT OF RECORD

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

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No. 164

THE UNITED STATES OF AMERICA AND MRS.  
JOSEPHINE BROWN, APPELLANTS.

VS. OREGON PACIFIC RAILWAY COMPANY, W. B.  
TURNER LUMBER COMPANY, AND BEVER LAND  
LUMBER COMPANY.

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

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ENTERED OCTOBER 4, 1917.

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 463.

THE UNITED STATES OF AMERICA AND MRS.  
JOSEPHINE BROWN, APPELLANTS,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY, W. R.  
PICKERING LUMBER COMPANY, AND RIVER LAND  
& LUMBER COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.

## INDEX.

	Original.. Print	
Caption.....	1	a
Transcript of record from the District Court of the United States for the Western District of Louisiana.....	6	1
Bill of complaint.....	9	9
Order on Walker B. Spenser, local agent.....	15	15
Separate answer of New Orleans Pacific R. R. Co.....	16	16
Answer of W. R. Pickering Lumber Co.....	24	24
Answer of River Land & Lumber Co.....	34	34
Intervention of Mrs. Josephine Brown.....	43	43
Order granting leave to prosecute intervention.....	49	49
Answer of the United States to intervention of Mrs. Josephine Brown...	50	50
Separate answer of New Orleans Pacific Railway Co. to intervention of Brown.....	51	51
Answer of W. R. Pickering Lumber Co. to intervention of Brown.....	58	58
Answer of River Land & Lumber Co. to intervention of Brown.....	68	68
Admissions of fact agreed to by solicitors for the Government, defendants, and intervenor, together with the documentary evidence therein re- ferred to.....	76	76
Exhibit a. Patent from United States to New Orleans Pacific Railway Co. of date March 3, 1885, in so far as the same relates to the SW. $\frac{1}{4}$ NE. $\frac{1}{4}$ , sec. 13, T. 2 N., R. 7 W.; and patent from United States to New Orleans Pacific Ry. Co. dated August 8, 1889, in so far as the same relates to NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ and N. $\frac{1}{4}$ NE. $\frac{1}{4}$ , said section, township, and range.....	85	85



Exhibit b. House Report 2698 (49th Congress, first session) and Senate Report No. 711 (47th Congress, first session), copied from printed report of the hearings before the Committee on Public Lands in the House of Representatives on H. R. 5890, dated January 27, 1914.....	93	93
Exhibit c. Deed from New Orleans Pacific Ry. Co. to Horace Brewster.....	123	123
Exhibit d. Interrogatories to Charles L. Pack, answers of said Pack, and deed attached to depositions.....	129	129
Exhibit e. Interrogatories and depositions of Ed. B. Green and deeds thereto attached.....	158	158
Exhibit f. Interrogatories and depositions of George R. Nicholson and deeds thereto attached.....	172	172
Testimony of Mrs. Josephine Brown.....	193	193
J. H. Hagan.....	202	202
H. H. Hagan.....	205	205
A. C. Kirkpatrick.....	208	208
J. C. Smith.....	211	211
Mrs. Josephine Brown (recalled).....	214	214
R. E. McKnight.....	215	215
T. B. Steyer.....	221	221
Elsie Stokes.....	223	223
Mrs. Josephine Brown (recalled).....	224	224
Offers of evidence.....	225	225
Testimony of Elsie Stokes (recalled).....	226	226
Tom. Stevens.....	228	228
Government's Exhibit A. Tracing of survey and filed investigation made by James W. Neal and Elsie Stokes.....	229	229
Government's Exhibit A-1. Resolution adopted at a meeting of the stockholders of the New Orleans Pacific Railway Co. accepting the provisions of the act of Congress of February 8, 1887, before the Committee on Public Lands of the House of Representatives on H. R. 5890 of date January 26 and 27, 1914.....	230	230
Government's Exhibit B. Agreement of the New Orleans Pacific Railway Co. to reconvey lands, dated August 3, 1892, copied from page 30, House Report 2698, 47th Congress, first session.....	231	231
Copy of Land Office record relating to the homestead entry and contest of Jasper J. Brown and the New Orleans Pacific Railway Co.....	233	233
Government's Exhibits D-1 to D-19. Description of exhibits in suit 16, United States v. New Orleans Pacific Railway Co.....	271	271
Government's Exhibit E. Letter from H. L. Muldrow, acting secretary, dated June 6, 1887, to the registers and receivers (5th Land Decisions).....	276	276
Government's Exhibit F. Letter from the Commissioner of the General Land Office, dated February 13, 1889, to the registers and receivers of the General Land Office (8th Land Decisions).....	279	279
Government's Exhibit G. Letter from Commissioner General Land Office to D. A. McKnight, attorney, Washington, D. C., dated March 2, 1893.....	286	286
Government's Exhibit H. Blue print made from tracing filed in connection with testimony taken at Alexandria, La., May 4, 1915.....	287	287
Defendants' Exhibit 1. Tracing of survey and field investigation made by R. E. McKnight, February, 1915.....	287½	287½
Decree.....	287½	287½
Petition and order of appeal.....	289	289
Assignment of errors.....	292	292
Intervenor's appeal bond.....	300	300

	Original. Print.	
Citation and service.....	302	302
Minutes of court.....	304	304
Appearance of New Orleans Pacific Ry. Co.....	304	304
Order of argument and submission.....	305	305
Final decree.....	306	306
Præcipe for transcript.....	308	308
Supplemental præcipe for transcript.....	318	318
Certificate of clerk.....	324	324
Order of argument and submission.....	326	327
Opinion, per curiam.....	327	328
Judgment.....	328	328
Petition for rehearing.....	328	329
Order denying rehearing.....	329	329
Petition for appeal.....	329	329
Order allowing appeal.....	330	330
Assignment of errors.....	331	330
Bond on appeal.....	333	332
Opinion, Walker, J., in case of United States et al. v. New Orleans Pacific Ry. Co. et al., October 3, 1916.....	335	333
Præcipe for record.....	347	340
Clerk's certificate.....	348	341
Citation and service.....	350	342



1-4 United States of America.—United States Circuit Court of Appeals, Fifth Judicial Circuit.

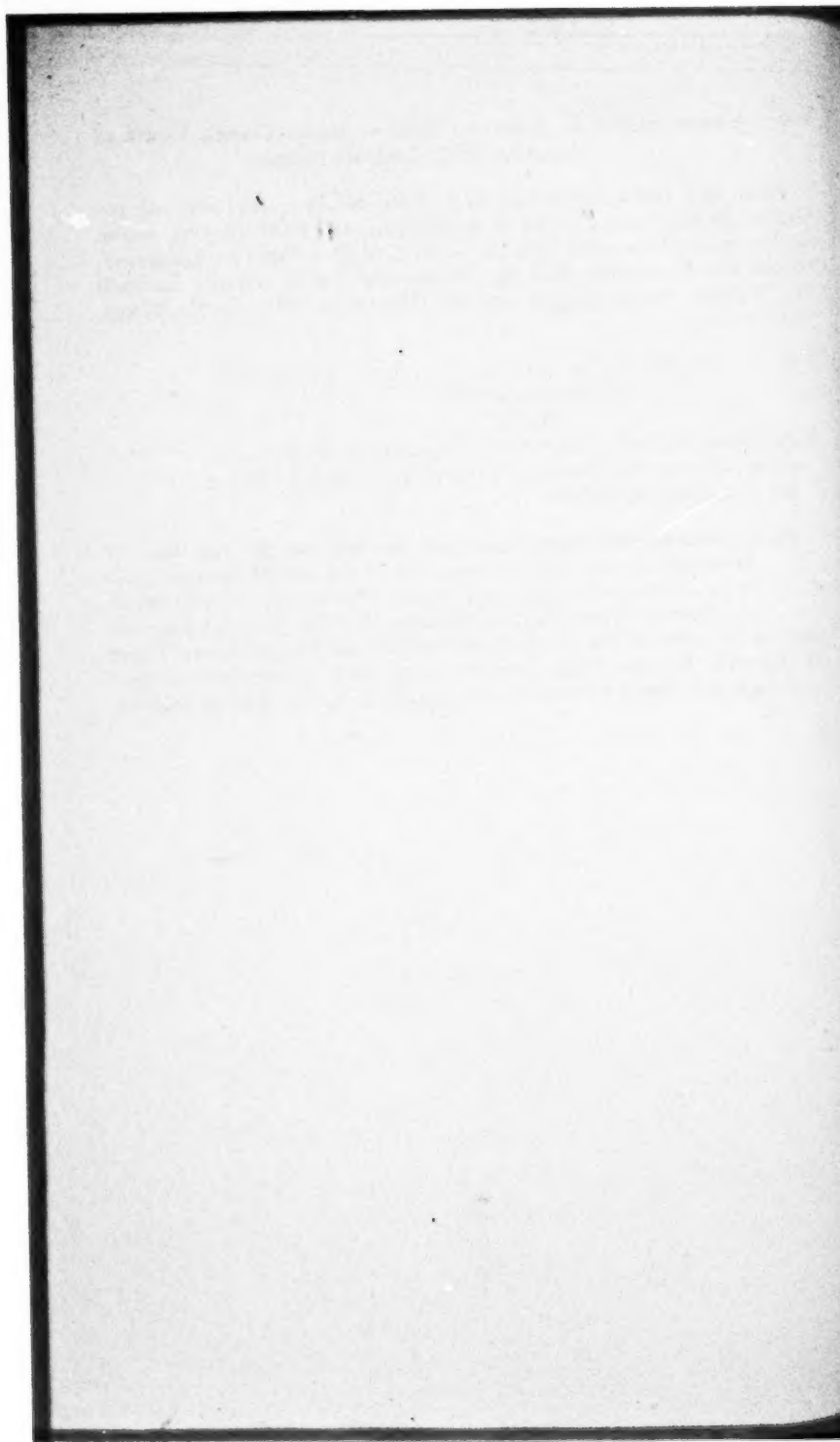
Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Thursday, November 18th, A. D. 1915, at New Orleans, Louisiana, before the Honorable Don A. Pardee and the Honorable Richard W. Walker, circuit judges, and the Honorable Thomas S. Maxey, district judge:

THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE  
Brown, appellants.

*versus*

NEW ORLEANS PACIFIC RAILWAY COMPANY, W. R. PICK-  
ering Lumber Company, and River Land and Lum-  
ber Company, appellees.

5 Be it remembered that heretofore, to wit, on the 1st day of December, A. D. 1915, a transcript of the record of the above-styled cause, pursuant to an appeal from the District Court of the United States for the Western District of Louisiana, was filed in the office of the clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2864 as follows:



UNITED STATES DISTRICT COURT, FIFTH CIRCUIT,  
WESTERN DISTRICT OF LOUISIANA.

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No. 961 In Equity.

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UNITED STATES OF AMERICA  
versus  
NEW ORLEANS PACIFIC RAILWAY COMPANY,  
and  
W. R. PICKERING LUMBER COMPANY,  
and  
RIVER LAND AND LUMBER COMPANY.

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MRS. JOSEPHINE BROWN, INTERVENOR.

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TRANSCRIPT.

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APPEAL TAKEN BY COMPLAINANT AND BY  
INTERVENOR

To The

UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE FIFTH CIRCUIT,

From The

UNITED STATES DISTRICT COURT FOR THE WEST-  
ERN DISTRICT OF LOUISIANA.



## APPEARANCES.

Hon. George Whitfield Jack,  
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Hon. Robert A. Hunter,  
Assistant United States Attorney.  
Solicitors for Complainant.

S. M. Atkinson, Esq.,  
Solicitor for Intervenor.

Solicitors for Appellants.

Messrs. Hudson, Potts, Bernstein & Sholars,  
Solicitors for New Orleans Pacific Ry. Co.

Messrs. Blanchard, Smith & Palmer,  
Solicitors for W. R. Pickering Lbr. Co.

Messrs. White & Thornton & Holloman,  
Solicitors for River Land & Lbr. Co.

Solicitors for Appellees.

United States District Court,  
Western District of Louisiana.

No. 961 In Equity,

UNITED STATES OF AMERICA,

versus

NEW ORLEANS PACIFIC RAILWAY COMPANY,  
W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND & LUMBER COMPANY.

INDEX TO TRANSCRIPT.

	Folio
Bill of Complaint.....	3
Pleas of prescription, estoppel, laches, motion to dismiss, and answer of New Orleans Pacific Railway Company .....	16
Pleas of prescription, estoppel, laches, motion to dismiss and answer of Pickering Lumber Company .....	24
Pleas of prescription, estoppel, laches, motion to dismiss and answer of River Land & Lumber Company .....	34
Intervention of Mrs. Josephine Brown.....	43
Answer of the United States to the intervention of Mrs. Josephine Brown.....	50
Pleas of prescription, estoppel and laches, and motion to dismiss, and answer of New Orleans Pacific Ry Co. to the intervention of Mrs. Josephine Brown .....	51

## INDEX TO TRANSCRIPT OF APPEAL—Continued.

	Folio
Pleas of prescription, estoppel and laches, and motion to dismiss, and answer of W. R. Pickering Lumber Company to the intervention of Mrs. Josephine Brown .....	58
Pleas of prescription, estoppel and laches, and motion to dismiss, and answer of River Land & Lumber Company to the intervention of Mrs. Josephine Brown .....	68
Admissions of fact agreed to by solicitors for the Government, defendants, and intervenor, together with the documentary evidence therein referred to, viz: .....	76
(a) Patent from United States to New Orleans Pacific Railway Company of date March 3, 1885, insofar as the same relates to the SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 13, T. 2 N., R. 7 W. And patent from United States to New Orleans Pacific Ry. Co. dated August 8, 1889, insofar as the same relates to NE $\frac{1}{4}$ NW $\frac{1}{4}$ and N $\frac{1}{2}$ NE $\frac{1}{4}$ said Section, Township and Range .....	85
(b) House Report 2698 (49th Congress, First Session) and Senate Report No. 711 (47th Congress, First Session), copied from printed report of the hearings before the Committees on Public Lands in the House of Representatives on H. R. 5890, dated January 27, 1914.....	93
(c) Deed from New Orleans Pacific Ry. Co., to Horace Brewster .....	123
(d) Interrogatories to Charles L. Pack, answers of said Pack and deed attached to depositions .....	129

## INDEX TO TRANSCRIPT OF APPEAL—Continued.

	Folio
(e) Interrogatories and depositions of Ed. B. Green, and deeds thereto attached.....	158
(f) Interrogatories and depositions of George R. Nicholson and deeds thereto attached..	172

## NOTE OF EVIDENCE:

## GOVERNMENT'S TESTIMONY.

MRS. JOSEPHINE BROWN.....	193
Cross Examination .....	198
Re-direct Examination .....	201
Re-cross Examination .....	201
Recalled to stand by Government.....	214
Recalled to stand by Government.....	224
J. H. HAGAN.....	202
A. C. KIRKPATRICK.....	208
J. C. SMITH.....	211

## DEFENDANT'S TESTIMONY.

R. E. MCKNIGHT.....	215
Cross Examination .....	216
Re-direct Examination .....	219
Tracing offered in evidence—Exhibit I.....	219
Re-cross Examination .....	220
Re-direct Examination .....	220
T. B. STEVENS.....	221
ELZIE STOKES .....	223
TOM STEVENS .....	228

## INDEX TO TRANSCRIPT OF APPEAL—Continued.

## GOVERNMENT'S EXHIBITS.

	Folio
(a) GOVERNMENT'S EXHIBIT A: Tracing of Survey and filed investigation made by James W. Neal and Elzie Stokes. (SENT UP IN ORIGINAL) .....	229
(a-) GOVERNMENT'S EXHIBIT "A-1": Resolution adopted at a meeting of the stockholders of the New Orleans Pacific Railway Company accepting the provisions of the Act of Congress of February 8th, 1887, before the Committee on Public Lands of the House of Representatives on H. R. 5890 of date January 26 and 27, 1914..	230
(b) GOVERNMENT'S EXHIBIT B: Agreement of the New Orleans Pacific Railway Company to reconvey lands, dated August 3, 1892, copied from page 30, House Report 2698, 47th Congress, First Session.....	231
(c) COPY OF LAND OFFICE RECORD: relating to the Homestead Entry and Contest of Jasper J. Brown and the New Orleans Pacific Railway Company .....	233
(d) GOVERNMENT'S EXHIBITS D-1 to D-19: Description of Exhibits in Suit 16—United States versus New Orleans Pacific Railway Company .....	271
GOVERNMENT'S EXHIBIT "E": Letter from H. L. Muldrow, Acting Secretary, dated June 6, 1887, to the Registers and Receivers. (5th Land Decisions) .....	276
GOVERNMENT'S EXHIBIT "F": Letter from the Commissioner of the General Land Office, dated February 13, 1889, to the Registers and Receivers of the General Land Office. (8th Land Decisions) .....	279

## INDEX TO TRANSCRIPT OF APPEAL—Continued.

	Folio
GOVERNMENT'S EXHIBIT "G" Letter from Commissioner General Land Office to D. A. McKnight, Attorney, Washington, D. C., dated March 2, 1893.....	286
GOVERNMENT'S EXHIBIT "H": Blue Print made from tracing filed in connection with testimony taken at Alexandria, La., May 4, 1915, SENT UP IN THE ORIGINAL.....	287

## DEFENDANTS' EXHIBITS.

DEFENDANTS' EXHIBIT "1" Tracing of survey and field investigation made by R. E. McKnight, February, 1915. SENT UP IN THE ORIGI- NAL .....	287
DEED from N. O. Pac. Ry. Co. to H. C. Brewster....	123
DEPOSITION of Chas. L. Pack and DEED from H. C. Brewster to Charles L. Pack.....	129
DEPOSITION of Edward B. Green and DEED from Chas. L. Pack to Edward B. Green.....	158
DEPOSITION of Geo. R. Nicholson and DEED from Chas. L. Pack to Geo. R. Nicholson.....	172
DECREE (favor Defendants) .....	287
PETITION AND ORDER OF APPEAL.....	289
ASSIGNMENT OF ERRORS.....	292
INTERVENOR'S APPEAL BOND.....	300
CITATION OF APPEAL (ORIGINAL) .....	302
MINUTES OF COURT.....	304
PRAECIPE FOR TRANSCRIPT.....	308
SUPPLEMENTAL PRAECIPE FOR TRANSCRIPT	318
CERTIFICATE OF CLERK.....	324





1        In the District Court of the United States,  
         For the Western District of Louisiana.

         No. 961 In Equity.

         UNITED STATES OF AMERICA

         versus

         NEW ORLEANS PACIFIC RAILWAY COMPANY

         and

         W. R. PICKERING LUMBER COMPANY

         and

         RIVER LAND & LUMBER COMPANY

To the Honorable Judge of the District Court of the United  
States for the Western District of Louisiana:

The United States of America, by Thomas W. Gregory,  
its Attorney General, brings this, its bill, against the New  
Orleans Pacific Railway Company, a corporation organized  
under the laws of the State of Louisiana, and the W. R.  
Pickering Lumber Company, a corporation organized under  
the laws of the State of Louisiana, with its domicile at Pick-  
ering, Louisiana; and the River Land & Lumber Company, a  
corporation organized under the laws of the State of New  
Jersey, with Walker B. Spencer, of New Orleans, Louisi-  
ana, as its agent in this State.

And for its cause of action states:

1.

That the United States, by Act of Congress approved  
on March 3, 1871, granted certain lands in that act de-  
scribed to a certain railroad corporation, to-wit: The New  
Orleans, Baton Rouge & Vicksburg Railroad Company; that  
thereafter the said New Orleans, Baton Rouge & Vicksburg

Railroad Company assigned its rights under said grant to another certain railroad corporation, to-wit: The New Orleans Pacific Railway Company. That on the 3rd day of March, 1885, and August 8, 1889, a certain land patents were issued by and in the name of the United States as grantor granting to the New Orleans Pacific Railway Company as grantee certain lands in the Parish of Vernon, State of Louisiana, which said patent included among other lands the following described tracts:

Northesast Quarter of the Northwest Quarter, the North Half of the Northeast Quarter, and the Southwest Quarter of the Northeast Quarter, Section 13, Township 2 North, of Range 7 West, Louisiana Meridian.

2 Plaintiff states that said land, situated in said parish and state aforesaid, was illegally and erroneously included in said patent, and that said patent should now be cancelled, in so far as it covers and embraces said land illegally and erroneously included in it, for the reasons as hereinafter fully set forth. Plaintiff states that the assignment of said land grant from the New Orleans, Baton Rouge & Vicksburg Railroad Company to the New Orleans Pacific Railway Company, referred to in paragraph one, was, by Act of Congress approved February 8, 1887, ratified and confirmed as to the portion of the grant not declared forfeited by said last named Act to the New Orleans Pacific Railway Company, the said lands to be located in accordance with the maps filed by the said New Orleans Pacific Railway Company in the Department of the Interior of the United States of America, October 27, 1881, and November 17, 1882, which indicate the definite location of said road.

## 2.

Plaintiff states that at the respective dates of the original grant by Congress, definite location of the line of the road by filing of maps, the issuance of the patent by the United States, the confirmation of the grant, all as above set forth, said land constituted a part of the public domain of the United States.

## 3.

Plaintiff states that the second section of said Act of Congress of February 8, 1887, ratifying and confirming to the New Orleans Pacific Railway Company certain of the lands included in the original grant of March 3, 1871, to the New Orleans, Baton Rouge & Vicksburg Railroad Company, contained the following provision:

"That all said lands occupied by actual settlers at the date of the definite location of the said road and still remaining in their possession, or in the possession of their heirs or assigns, shall be held and deemed excepted from said grant and shall be subject to entry under the public land laws of the United States."

Which provision, plaintiff states, applied to lands at that time patented as well as to lands thereafter to be patented.

## 4.

Plaintiff states that the third section of said Act of Congress of date of February 8, 1887, provided that the confirmation of the said grant to the said New Orleans Pacific Railway Company should take effect when the said company should accept the provisions of the Act, in the manner therein prescribed, and agree to discharge all of the duties and obligations imposed upon its assignor by the Act of March 3, 1871; and plaintiff avers that the said New Orleans Pacific Railway Company thereupon, on April 20, 1887, filed with the Secretary of the Interior such acceptance, and so accepted the provisions of said Act in the manner therein prescribed and agreed to discharge all the obligations and duties imposed by said acts, herein referred to.

## 5.

Plaintiff further states that the said New Orleans Pacific Railway Company, in order to facilitate an early adjustment of such land grant, filed in said Department of

the Interior an agreement, bearing the date of August 3, 1892, the third section of which provides:

3        "That in the cases where patents have issued to said railway company for lands which have been or may hereafter be adjudged by the Commissioner of the General Land Office to have been in possession of actual settlers at the date of the definite location of said railway company's road, and title is in said railway company, and said trustees agree to make, without delay, conveyance thereof to the United States, and where such have been sold by said railway company to third persons, said railway company undertakes to recover title thereto, without delay, and convey the same to said settlers or to the United States; and the said trustees undertake to join in such conveyances and to do all acts necessary on their part to enable the railway company to carry out this agreement and stipulation.

6.

Plaintiff states that prior to, and at the time of, the filing of said maps by the New Orleans Pacific Railway Company, showing the definite location of its road, as hereinabove set forth, and at the time of the passage of the said Act of Congress of February 8, 1887, the land described in the first paragraph of this bill, namely the Northeast Quarter of the Northwest Quarter, and the North Half of the Northeast Quarter, and the Southwest Quarter of the Northeast Quarter, Section 13, Township 2 North, of Range 7 West, Louisiana Meridian, was occupied, and in possession of Jasper J. Brown who was then and there an actual settler, and in all respects qualified to enter public lands of the United States under the Homestead laws thereof, and the inclusion of the said land in the patents issued to the New Orleans Pacific Railway Company on the 3rd day of March, 1885, and the 8th day of August, 1889, hereinabove referred to, were therefore, erroneous. Plaintiff states that the said Jasper J. Brown filed an application to

enter as a homestead the said tract of land, and after a hearing was had thereon, pursuant to the rules and regulations of the plaintiff's Land Department, a decision was rendered in the settler's favor and against the said New Orleans Pacific Railway Company by the Commissioner of the General Land Office on \_\_\_\_\_ as shown by docket number \_\_\_\_\_ which said contest and decision embraced all of the land in this paragraph described. Plaintiff states that the Commissioner of the General Land Office of said Department of the Interior found and held said land to have been erroneously patented to the said New Orleans Pacific Railway Company, because it was, as aforesaid, occupied by the said Jasper J. Brown at the time of the definite location, as aforesaid, of the said road, and still remained in his possession at the time of the said contest.

## 7.

Plaintiff states that the said New Orleans Pacific Railway Company was duly notified by the Department of the Interior of said decision, and requested to restore the title to said land to the United States, and to comply with the conditions of its agreement of August 3, 1892, hereinabove referred to, with which said request the New Orleans Pacific Railway Company did not comply, and thus failed to perform the conditions of its said agreement of August 3, 1892, as above set forth, and failed to restore said land in compliance with its said contract in that regard.

## 8.

Plaintiff avers that all lands within the exterior limits of the grant made to the said railway company which were occupied by actual settlers at the date of the definite location of the line of road of said company and remaining in the possession of of such settlers, their heirs or assigns, on the date of the passage of the Act of Congress of February 8, 1887, aforesaid, were specifically excepted from the grant made by Section 2 of said act, and that the er-



roneous inclusion in the patents to the said railway company on the 3rd day of March, 1885, and the 8th day of August, 1889, of the above described tract of land, which was at that time occupied by an actual settler, as aforesaid, were illegal and without warranty of law, and that the said patents in so far as they include said tract should be cancelled by decree of this court, to the end that the plaintiff may convey the title thereto to the said homestead claimant, his heirs or assigns, as it is made plaintiff's duty to do by the several acts of Congress aforesaid.

## 9.

Plaintiff avers that said described tract of land is now claimed by the W. R. Pickering Lumber Company and the River Land & Lumber Company under mesne conveyances from the said New Orleans Pacific Railway Company, and had full knowledge and notice of the rights and occupancy of the said actual settler and who therefore acquired the title subject to such settler's rights and equities.

## 10.

Wherefore plaintiff prays the judgment and decree of this court (1) cancelling and declaring null and void said patents issued to the said New Orleans Pacific Railway Company on the 3rd day of March, 1885, and 8th day of August, 1889, in so far as the same includes the said Northeast Quarter of the Northwest Quarter, and the North Half of the Northeast Quarter, and the Southwest Quarter of the Northeast Quarter, Section 13, Township 2 North, of Range 7 West, Louisiana Meridian, in the Parish of Vernon State of Louisiana, and also cancelling defendants, the W. R. Pickering Lumber Company's and the River Land & Lumber Company's deeds to said land, or if the foregoing relief shall be denied, (2) that a decree be entered declaring the title held by the W. R. Pickering Lumber Company and the River Land & Lumber Company defendants to be in trust for the said Jasper J. Brown, the homestead settler, or his heirs or assigns, and the latter to be decreed to be the owner of said land and that the defendants, the W. R. Pick-

5        ering Lumber Company and the River Land & Lumber Company be directed to make, execute and deliver to the said Jasper J. Brown, settler, his heirs or assigns, a deed conveying all their right, title and interest to the said land, and in their default or failure to do so that such deed be made by the Clerk or some other person duly appointed thereto by this honorable court.

And plaintiff further prays that, in view of the fact that Walker B. Spencer, the agent in this State of the River Land & Lumber Company, one of the defendants herein, is domiciled in New Orleans, in the Eastern District of Louisiana, and is not now in the Western District of Louisiana, an order be entered directing such absent representative and agent of said corporation to appear, plead or answer this bill by a day certain to be designated by your Honor, and that said order be served upon said local agent of the said River Land & Lumber Company wherever found, and that the court grant such further relief as the nature of the case may require.

Service acknowledged and citation waived this Jan. 16", 1915 reserving all rights, equities, defenses and legal delays, and waiving nought else hereby.

(Sig) HUDSON, POTTS,  
BERNSTEIN & SHOLARS,  
Attys for N. O. Pac. Ry. Co.

THOMAS W. GREGORY  
Attorney General of  
the United States.

ROBERT A. HUNTER  
Assistant Unnited  
States Attorney.

#### ORDER.

The above and foregoing being considered, and it appearing to the court that Walker B. Spencer, local agent of the River Land & Lumber Company, one of the defendants herein, is domiciled in New Orleans, Louisiana, and is not within the Western District of Louisiana, it is, therefore, ordered that the said absent agent, Walker B. Spencer, be, and he is hereby, directed to appear, plead or answer to the

above and foregoing bill at the City of Lake Charles, in the Western District of Louisiana, on the 6th day of April, 1915, at the hour of 10 o'clock A. M., and that service be made on said agent and representative of said defendant corporation wherever found.

Thus done and signed at Shreveport, Louisiana, this 6th day of February, 1915.

ALECK BOARMAN,  
United States Judge.

6           ENDORSED: No. 961. United States District Court, Western District of Louisiana. United States vs New Orleans Pacific Railway Company and W. R. Pickering Lbr. Co. and River Land & Lbr. Co. BILL OF COMPLAINT AND ORDER FOR SERVICE. Filed Jan. 21, 1915, Leroy B. Gulotta, Clerk U. S. District Court, West Dist. of Louisiana.

7           In the United States District Court  
            Western District of Louisiana  
            For the Shreveport Division.

No. 961 In Equity.

UNITED STATES OF AMERICA,

Plaintiff

versus

THE NEW ORLEANS PACIFIC RAILROAD CO.,  
ET ALS, and Defendants.

THE SEPARATE ANSWER OF THE NEW ORLEANS  
PACIFIC RAILROAD COMPANY

And now comes the New Orleans Pacific Railroad Company, made defendant in the above entitled and numbered cause, and appearing separately, moves the court to dismiss and reject the bill filed herein by the United States Government, upon the following grounds and for the following reasons, to-wit:

## A.

Defendant offers, pleads, excepts and shows that neither Thomas W. Gregory, Attorney General of these United States, nor George Whitfield Jack, United States Attorney in and for the Western District of Louisiana, had or have the right or authority to bring, institute, or prosecute this suit for the reason that the Government of the UNITED STATES OF AMERICA has no interest in fact and alleges no interest in the property involved in this suit; it is not alleged that any fraud has been perpetrated upon the Government or that it is in any way prejudiced, nor is it alleged that the Government is under the obligation to any individual or individuals to make good any purported title by setting aside the patent herein attacked for fraud or for any other reason; and it is not alleged nor a fact that there is any public duty or necessity requiring this action to be brought.

Wherefore, Defendant pleads that this, its exception to the right, authority and capacity of the Government, through its said officers, the Attorney General and the United States Attorney, be sustained and the bill be dismissed accordingly.

## B.

Defendant offers, pleads, excepts and shows that the bill should be dismissed for want of equity and it especially pleads against the right and propriety of the United States to prosecute it said bill the doctrine of laches and equitable estoppel and shows that a period of thirty years has elapsed since the issuance of the patent herein sought to be set aside, during which time no attack has been made thereon, and in faith whereof the title to the lands covered thereby has been transferred many times and has passed by mesne conveyances into the hands of remote and bona fide purchasers and on the faith and reliance of said patent and others similar thereto one of the main industries of the State of Louisiana has been built up, which the destruction of their titles would utterly ruin, Defendant shows that the

United States, Plaintiff, is only a nominal party, merely formal, and that the suit is brought in its name to enforce the pretended private rights of individuals and no interest of the Government is involved and the litigation is being carried on at its expense and in its name in behalf of and for the benefit of private parties who claim to have equitable titles to or rights in or to the lands in question by virtue of prior settlements or donations, and that the effect and only effect of a decree cancelling this patent as prayed for would be simply to enable these said third parties to perfect any equitable claims or titles they might have or become pos-

8           sessed of after thirty years have elapsed since the patent to said land was issued to this defendant, and such individuals urging these equitable claims are the real parties in interest in this litigation and the United States Government is not a real party, but merely a nominal or formal party in interest.

Wherefore, Defendant pleads and so pleading prays that this its plea of laches and equitable estoppel be sustained as depriving said bill of all equity and this cause dismissed accordingly.

### C.

Defendant offers, pleads, excepts and shows that the bill herein should be dismissed and rejected because the titles of these Defendants have been confirmed, secured and rendered immune from attack by the United States for any cause, whatever, by the prescription, limitation and confirmation of the Acts of Congress of March 3, 1887, (24 Stat. L. 556, ch. 376); March 3, 1891 (26 Stat. L. 1093); and March 2, 1896 (29 Stat. L. 42 ch. 39), which prescription of five years and limitation and confirmation established by the said acts is hereby especially plead both in bar of the action and affirmatively, as a muniment of title.

Wherefore, Defendant pleads and, so pleading, prays that this its plea of prescription, limitation and confirmation be sustained and the bill dismissed accordingly.

And this defendant tenders the above motions, exceptions and pleas in limine and prays that the same may be

separately heard and disposed of before the trial of the case on its merits, and that upon said hearing, that they be sustained and the bill dismissed and rejected upon the grounds and for the reasons therein set forth and that this be done at the cost of the Plaintiffs.

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And now, reserving the benefit of the above and foregoing pleas of want or right of authority, want of equity, laches and estoppel, and prescription, limitation and confirmation, this defendant answers the allegations of the plaintiff's petition as follows, to-wit:

I.

Defendant admits the allegations of the first paragraph of the first section of the Plaintiff's petition; Defendant denies each and every allegation contained in the second paragraph of the first section of plaintiff's petition. Defendant especially denies that the lands therein mentioned were illegally or erroneously included in said patent, or that the latter should be now cancelled for any reason. Defendant denies the tenor and effect of the Act of Feb. 8, 1887, as set forth in plaintiff's petition, but admits the passage of the Act of Feb. 8, 1887, by the Congress of the United States for the objects and purposes clearly set forth in the said act. Defendant admits the date of definite location of the New Orleans Pacific Railroad as alleged but denies the force and effect alleged by plaintiff on account thereof.

II.

Defendant admits that the land in question was a part of the public domain until the title thereto was by Act of Congress vested in this Defendant or its predecessor in interest, the N. O. B. R. & V. Railway Co., but specifically denies that at the time of the confirmation of the grant as alleged that the land was a part of the public domain in the sense Plaintiff alleges and construes and the effect and conclusion which Plaintiff seeks to establish by its section two are specifically denied and rejected.



## III.

Defendant admits the existence of the second section of the Act of Feb. 8, 1887, as a part of the said Act but denies specifically each and every allegation, conclusion, inference and deduction relative thereto made by the Plaintiff in section three of its petition.

9

## IV.

Defendant admits the allegations of the fourth section of the Plaintiff's petition as matters of historical fact but denies the deduction, inference and conclusions Plaintiff seeks to draw therefrom.

## V.

Defendant admits the allegations of section five of Plaintiff's petition, as an historical fact but denies specifically each and every deduction, conclusion and inference Plaintiff seeks to draw therefrom.

## VI.

Defendant denies each and every allegation of section six of the Plaintiff's petition and each and every deduction, inference or conclusion sought to be drawn therefrom and on the trial hereof will require strict and legal proof of the same.

## VII.

Defendant denies each and every allegation of section seven of the Plaintiff's bill and each and every deduction, inference and conclusion sought to be drawn therefrom and on the trial hereof will require strict and legal proof of the same.

## VIII.

Defendant denies each and every allegation of section eight of the Plaintiff's petition and each and every deduction inference and conclusion sought to be drawn therefrom and upon the trial hereof will require strict and legal proof of the same.

## IX.

Defendant has not the necessary information upon

which to base an admission or a denial of the allegations of section nine of plaintiff's petition relative to the present ownership of the N. O. Pac. title but for the purpose of requiring strict and legal proof thereof denies same as alleged, and denies, specifically each and every other allegation of said section of Plaintiff's petition and each and every deduction, inference and conclusion, sought to be draw therefrom, and upon the trial hereof will require strict and legal proof of the same.

#### X.

Defendant denies that the Plaintiff is entitled to the relief prayed for in the prayer of the petition as set forth in section ten thereof, but avers that the alternative prayer, being No. 2, thereof, makes clear and beyond question the motive, for, and the character of the relief sought and shows the lack of interest of the United States itself and renders absolute the exceptions and motions in this answer plead.

#### XI.

Further answering, this Defendant shows that it is not at this time and for a long time prior hereto it has not been possessed of the title to the lands in question nor to any of the lands patented to it under its grant, but that it sold the same to various and sundry parties, who paid value for the same and bought in entire good faith and in reliance upon the patent of the United States, except that this Defendant owns about a thousand acres of such land, which does not comprise the land herein sued for and as to which this defendant is now and has at all time been ready and willing to perform each and every obligation which is within its power of performance and which it is under a duty to perform by Act of Congress or special contract. Defendant shows that its deeds of transfer of these lands were special warranty deeds with the warranty of title being limited to its own acts. Defendant shows that it has an interest in this litigation and the outcome thereof by reason of its duties and liabilities to its transferees and arising under the acts of Congress aforesaid.

Further answering this, Defendant shows that the plaintiff is not entitled to the relief sought by virtue of the Act of Feb. 8, 1887, because:

(a) The lands here in question were and are not, have never been and cannot be held, deemed or considered to be or to have been subject to or in any manner affected by the said Act of Feb. 8, 1887, or any of its terms, provisions or conditions as is contended for by the Plaintiff, but that its title thereto vested under and by virtue of and rests upon previously existing laws, to-wit: the act of March 3, 1871.

(b) The said land was not possessed by actual settlers or the heirs or assigns of such actual settlers under the terms of the said provisio of section two of the said Act of Feb. 8, 1887.

(c) The said Act of Feb. 8, 1887, does not in any manner apply to lands lying within the indemnity limits of said grant.

(d) The Act of Feb. 8, 1887, does not apply to lands which were patented previously thereto except to confirm the titles to such lands and to permit the operation of the so-called "Blanchard-Robnson Agreement" as to such lands under the terms and provisions of the said Act.

(e) Defendant further shows that it complied with all of the Acts of Congress under which the said lands were obtained and that the title which vested in it thereby was absolute and indefeasible, as evidenced by the said patents.

(f) Defendant shows that the prescription, limitation and confirmation established by the Acts of Congress plead in Defendant's exception and motion in limine No. C, supra, operates as a rule of property and confirms and establishes property rights in this Defendant and its transferees and as such said Acts are hereby set forth and affirmatively plead.

(g) Defendant avers that the construction of the Act

of Congress of Feb. 8, 1887, which is urged by the Plaintiffs, would render the Act unconstitutional, null and void as divesting vested rights, impairing the obligations of contracts, taking property without due process of law, and denying the equal protection of the laws, all in violation of any contrary to the provisions, in letter and spirit, of section ten of article one and the fifth amendment to the constitution of the United States, which unconstitutionality is hereby especially urged and plead.

(h) Defendant shows that there was at and prior to the passage of the Act of March 8, 1871, an United States District land office open and existing at Natchitoches, within whose jurisdiction the lands here in question were located, and that these said lands had been surveyed and the lines established by an official United States survey and well known generally and available and that there was nothing to prevent any claimant from taking any and all steps necessary and prerequisite under the public land laws to initiate his claim thereto, to file any homestead application or pre-emption claim or assert any right or claim which he might have under the laws for the desposition of the public domain, which action Defendant alleges these settlers should have taken and not taking preserved no rights as against the Government or its grantees and having obtained none under any subsequent Acts of Congress or otherwise cannot now be heard to question the legal title.

Wherefore, Defendant prays, that its motion in limine, plead first above be so heard and sustained as above prayed, and Defendant further prays that after trial hereof, in case such a trial be had, that the answer and the affirmative defense herein set up be held and deemed good in law and

in equity and that a decree be entered herein confirming and quieting the patent issued to this Defendant, New Orleans Pacific Railroad Company, for its own benefit and for the use and benefit of its assigns and transferees, and rejecting and dismissing at its own cost the petition and demands of the Plaintiff's herein.

Defendant Further prays, for all equitable and general

relief in the premises as is just and proper to this Honorable Court seems meet.

HUDSON, POTTS, BERNSTEIN & SHOLARS  
Attorneys for the N. O. Pac. Railroad Co.

ENDORSED: No. 961 in Equity. United States District Court, Western District of Louisiana. Shreveport Division. United States of America, Plaintiff versus New Orleans Pacific Railway Company, W. R. Pickering Lbr. Co., River Land & Lumber Company, Defendants. Separate Answer of the New Orleans Pacific Railway Company. Filed Apr. 20, 1915, Leroy B. Gulotta, Clerk. U. S. District Court, West Dist. of Louisiana.

12 In the District Court of the United States for the  
Western District of Louisiana.

No. 961 In Equity.

UNITED STATES OF AMERICA,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY,

and

W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND & LUMBER COMPANY,

And now comes the W. R. Pickering Lumber Company, one of the defendants herein, and, appearing separately, moves the Court to dismiss and reject the bill filed herein because an Act of Congress, approved March 3, 1891, provides that all suits by the United States to vacate and annul any patent issued prior to its passage should be brought within five years from the passage thereof, and an Act of Congress approved March 2, 1896, provides that all suits by the United States to vacate and annul any patent theretofore

issued under any railroad or wagon road land grant should be brought within five years from the date of the passage of the said Act.

And your respondent shows that, as by said bill appears, the patent herein sought to be annulled was issued prior to the passage of both the said Acts of Congress of the United States; that is to say on March 3rd, 1885, patent issued to Southwest quarter (SW $\frac{1}{4}$ ) of Northeast quarter (NE $\frac{1}{4}$ )? Section Thirteen (13), Township Two (2) North, Range Seven (7) West, and on August 8, 1889, patent issued to North Half (N $\frac{1}{2}$ ) of Northeast quarter (NE $\frac{1}{4}$ ) of Section Thirteen, (13) Township Two (2) North, Range Seven West, as said bill alleges, and the bill herein, being a suit to vacate and annul the said patent was filed in your Honorable Court on the 21st day of January, 1915, and that hence under both the said acts of Congress, the time within which the Government could have brought this suit to vacate and annul the patent issued to the New Orleans Pacific Railway Company expired long prior to the filing of this bill in your Honorable Court, and to the issuance of the subpoena herein.

Defendant further pleads against the right and propriety of the United States to prosecute its said bill the doctrine of equitable laches and of estoppel, and shows that a period of thirty years has elapsed since the issuance of patent to Southwest quarter (SW $\frac{1}{4}$ ) of Northeast quarter (NE $\frac{1}{4}$ ), Section Thirteen (13), and a period of Twenty-six years has elapsed since the issuance of the said patent covering the North half (N $\frac{1}{2}$ ) of Northeast quarter (NE $\frac{1}{4}$ ) of Section Thirteen (13), Township Two (2) North, Range Seven (7) West, during which time no attack has been made thereon; and in faith whereof the title to the lands covered thereby has been transferred and has passed by mesne conveyances into the hands of remote bona fide purchasers; that the United States, Complainant, is only a formal party and that the suit is brought in its name to enforce the pretended rights of individuals and no interest of the Government is involved and the litigation is being carried on in

behalf of and for the benefit of private parties who claim to have equitable titles or rights in or to the lands by virtue of prior settlements or donation, and that the effect of a decree cancelling these patents would be simply to enable some other parties to perfect any equitable titles which they may have after thirty years has elapsed since the patent was issued to Southwest quarter of Northeast quarter, Section Thirteen, Township Two North, Range Seven West, and Twenty-six years since patent was issued to North half of Northeast quarter of Section Thirteen, Township Two North, Range Seven West, and such individuals are the real parties in interest in this litigation and the United States, complainant, is only a nominal and is not the real party in interest.

Neither Thomas W. Gregory, Attorney-General of the United States, nor George Whitfield Jack, United States Attorney for the Western District of Louisiana, had right or authority to bring or institute this suit for the reason that the United States Government has no interest, and alleges no interest in the property involved in this suit, and it is not alleged that any fraud has been perpetrated on the Government to its prejudice, nor is it alleged that the Government is under obligation to any individual to make his title good by setting aside fraudulent patents, nor is it alleged that there is any duty on the part of the Government to the party requiring this action to be brought.

And this defendant therefore tenders this, its motion in limine, based upon the prescription and limitation set forth and the equitable laches and estoppel above pleaded, and the plea to the right of the Attorney-General or the District Attorney to institute this suit, and prays that the same may be separately heard and disposed of before trial of the case, and that upon said hearing, it be sustained, and the bill dismissed and rejected at the cost of complainant.

And now reserving the benefit of the above and foregoing pleas of prescription and limitation, laches and estoppel, and the plea to the right of the Attorney-General or the District Attorney to bring this suit, and only in case



same should be overruled, this defendant, the W. R. Pickering Lumber Company, answers with reference to the Southwest quarter of Northeast quarter and North half of Northeast quarter, Section Thirteen (13) Township Two (2) North, Range Seven (7) West, described in the Bill of Complaint, which one hundred and twenty acres is owned by this defendant, and with reference to same, says:

## 1.

Defendant admits the allegations of Section One (1) of the Bill; except that it specifically denies that the land involved in this cause, viz: the Southwest quarter of the Northeast quarter and the North half of Northeast quarter of Section Thirteen (13) Township Two (2) North, Range Seven (7) West, Louisiana, Meridian, situated in Vernon Parish, Louisiana, was illegally and erroneously included in the said patent of the United States to the New Orleans Pacific Railway Company of March 3, 1885, and of August 8, 1889; and they deny that said patent should be cancelled, in so far as it covers and embraces said land.

## 2.

Defendant admits the allegations of Section Two (2) of the Bill; except as to the confirmation of the grant by Act of Congress of February 8, 1887, and shows that Complainant was completely and irrevocably divested of title by the Act of Congress of March 3, 1871, and by the issuance of patent of March 3, 1885, and of August 8, 1889; and defendant avers that the Public Land Office was open and in existence at Natchitoches, Louisiana, in whose district and under whose jurisdiction the land was situated; that the said land was surveyed and the hereinafter mentioned Jasper J. Brown could, and should have filed his homestead application within the delays prescribed by law.

## 3.

Defendant admits that the words quoted in paragraph Three (3) of the Bill are an exact quotation of the proviso



to the Section Two (2) of the Act of February 8, 1887, but denies that the said act applied to lands at that time patented as well as lands thereafter to be patented.

14

4.

Defendant admits the allegations of Section Four (4) of the Bill as matters of fact, but denies the legal conclusions that complainant seeks to draw therefrom.

5.

Defendant admits the allegations of Section Five (5) of the Bill, as matters of fact, but specifically denies that this defendant, the W. R. Pickering Lumber Company, is or can be bound or precluded in any way by said agreement of August 3, 1892, or any of its provisions or clauses, because the New Orleans Pacific Railway Company had, prior to that date, mortgaged said lands, under which said mortgage the mortgagee sold such land to this defendant's author in title, the Kisatchie Land Company, as will be hereinafter more clearly set forth.

6.

Defendant denies all and singular the allegations of Section Six (6) of the Bill, especially in so far as they in any way affect the Southwest quarter of Northeast quarter and North half of Northeast quarter of said Section Thirteen (13), being the land embraced in this suit.

7.

This defendant is not sufficiently informed as to the allegations of Paragraph Seven (7) of the Bill, to enable it to answer, and therefore denies same, and, further answering, avers that for the reasons set forth in the preceding paragraphs of this answer, and particularly in paragraph five (5) and six (6) defendant is not affected or precluded by the matters named in section seven (7) of the Bill, because said matters are alleged to have occurred long after the New Orleans Pacific Railway Company had mortgaged said land, under which mortgage the mortgagee sold the land to defendant's author, Kisatchie Land Company.

## 8.

Defendant denies that complainant is entitled to any relief by virtue of the Act of Congress of February 8, 1887, because:

(1) The land here in question were and are not, have never been, and cannot be held, deemed or considered to be subject to, or in any manner affected by the said Act of February 8, 1887, or by any of the terms, provisions or conditions thereof.

(2) The said land was not possessed as alleged by actual settlers nor the heirs or assigns of actual settlers under the terms of the said proviso.

(3) Defendant further represents that the New Orleans Pacific Railway Company complied with all the acts of Congress under which the said lands were obtained, and that the said patent vested in said New Orleans Pacific Railway Company and in its transferees and assigns absolute and indefeasible title to the said land as shown by the recitals of the said patent, the said land having been duly selected and the said selection having been duly approved.

Defendant further shows that the said sales and said transfers above set forth were made in good faith for a valuable consideration without notice of any defect in the title and vested complete legal and indefeasible title in the said vendees on the execution and passing of the said Acts of Conveyance respectively, and that said vendors were each seized in fee thereof; and that during the said ownership as above set forth, each held, owned and possessed the lands peaceably as the sole, legal and bona fide owner thereof. That the consideration expressed in said deeds attached hereto and made a part hereof were bona fide and truly paid, and that the vendees in said deeds were without notice of any outstanding claims to said land or defects in said title previous to and down to the time of paying said consideration and the delivery of said deeds; and defendant denies that it, or its authors in title had any notice of any settle-

ment, occupancy of, or that any homestead, pre-emption, or other claims had attached to the land. And further shows that the title to the said lands under the patents issued to the New Orleans Pacific Railway Company has been confirmed by the Act of Congress of March 3, 1887, March 3, 1891, and of March 2, 1896, the latter of which provides in the first section thereof, that suits to annul any patents to lands heretofore erroneously issued to any railroad or wagon road grant, shall only be brought within five years from the passage of the Act, and to vacate and annul any patents thereafter issued within six years from the date of the issuance of said patent, and the said Section further provides:

“But no patent to any lands held by bona fide purchasers shall be vacated and annulled, but the right and title of such purchaser is hereby confirmed.”

Which said Acts of Congress, and the several provisions thereof, and especially the portion of the Act of March 2, 1896, just above quoted, are pleaded as muniments of title of defendant, specially confirming, if any confirmation is necessary, the title to the lands described by complainant, as bona fide purchasers of same by virtue of the chain of title as above set forth.

And defendant further pleads the provisions of the said Acts of Congress, March 3, 1887, March 3, 1891, and March 2, 1896, in bar of this suit, and shows that any right which complainants may have had at any time to institute this suit, has long since prescribed.

(4) The awarding and issuance of the aforesaid patent by the United States, through its duly authorized department, was a final and conclusive adjudication by a legally constituted tribunal charged by law with the duty of determining all the facts legally prerequisite to the issuance of said patent, and said adjudication was final and conclusive and is not open to said attack, as is set forth by complainant herein, or at the time hereof.

5. This defendant further alleges that the

sales and transfers of the land in question above set forth, were made in good faith and for a valuable consideration and vested a complete, legal, and indefeasible title in the vendee of the New Orleans Pacific Railway Company and in the various vendees, predecessors in title of this defendant, and alleges that on the execution and passing of the said acts of conveyance respectively, that during the time of ownership of each of the predecessors in title of this defendant, each thereof held, owned and possessed the said lands peaceably as the sole, legal, and bona fide owners thereof; and this defendant alleges that it is a bona fide purchaser of the lands in question, having paid therefor the full reasonable cash value of said land, at the date of its purchase, and alleges that even if it should be proven that any error or irregularity was made in the issuance of the patent by the Government to the New Orleans Pacific Railway Company, yet such error or irregularity cannot be imputed to this defendant, defendant being a bona fide purchaser for value without notice of such error or irregularity and in actual ignorance thereof.

## 9.

Defendant denies all the allegations of Section Nine (9) of the Bill.

## 10.

Defendant denies that complainant is entitled to the relief prayed for in the prayer to the Bill.

## 11.

Further answering, defendant avers that it has owned and possessed the land in good faith under deeds translativ of property duly recorded in the Conveyance Books of Vernon Parish, Louisiana, by virtue of the following chain of title, viz:

16      SOUTHWEST QUARTER OF NORTHEAST  
QUARTER:

1. United States to New Orleans Pacific Railway Company, selections dated December 29, 1883, per approved list No. 4 from United States book of entrys.

United States to New Orleans Pacific Railway Company, Patent March 3, 1885, filed July 3, 1885, recorded Book D, page 132.

**NORTH HALF OF NORTHEAST QUARTER:**

United States to New Orleans Pacific Railway Company, selections dated December 29, 1883, per approved list No. 6 from United States book of entrys. United States to New Orleans Pacific Railway Company, patent dated August 8, 1889, filed April 24, 1890, recorded Book F, page 56.

2. New Orleans Pacific Railway Company to John M. Dillon and Henry M. Alexander, Trustees, mortgage dated April 17, 1883, filed May 3, 1883, recorded Book C, page 50.
3. New Orleans Pacific Railway Company by E. B. Wheelock, President, and Wm. N. Nicholson, Secretary, to John M. Dillon, and Henry M. Alexander, Trustees, mortgage dated April 17, 1883, and filed August 7, 1897, recorded in Book E, page 366.
4. New Orleans Pacific Railway Company by E. B. Wheelock, President, and Wm. N. Nicholson, Secretary, to John M. Dillon, and Henry M. Alexander, Trustees, mortgage dated January 5, 1884, filed August 10, 1897, recorded Book E, page 390, supplemental to mortgage given April 17, 1883, and on same property.
5. New Orleans Pacific Railway Company by Wm. Grant Special Master and John F. Granger and Geo. S. Clay, Trustees to Kisatchie Land Company, Ltd., special masters sale dated June 28, 1900, filed August 1, 1900, recorded Book P, page 237.  
Instrument also recorded Book P, page 501.
6. Kisatchie Land Company, Limited, by R. W. Rogers, President, to Florian Glauque, deed dated April 23, 1901, filed May 22, 1901, recorded Book S, page 501, accepted by grantee.
7. Kisatchie Land Company, Limited, to Wm. M. Rhodus, President, duly authorized by resolution hereto an-

nexed, to Florien Giaque ratification dated June 24, 1902, filed July 31, 1902, recorded Book V, page 367.

8. Judgment U. S. Court dated June 9, 1900, filed January 11, 1904, recorded Book 3, page 381, confirming the sale to New Orleans Pacific Railway Company by Wm. Grant special master to Kisatchie Land Company, Limited.
9. Florien Giaque, to Wm. T. Shearer warranty deed dated August 17, 1903, filed August 29, 1903, recorded Book No. 3, page 116.
10. Wm. T. Shearer, wife living, to W. R. Pickering Lumber Company, warranty deed August 20, 1903, filed August 29, 1903, recorded Book No. 3, page 119.

Defendant attached hereto, as a part of this answer, a certified copy of the patent from the New Orleans Pacific Railway Company, and a certified copy of each of the deeds named and described in the chain of title above set forth, and incorporates them into and makes them part of this answer.

17 WHEREFORE, defendant prays: That the Complainant's demand be rejected at its cost and that the defendant, the W. R. Pickering Lumber Company, be quieted in its ownership and possession of the said land, viz: The Southwest quarter (SW $\frac{1}{4}$ ) of Northeast quarter (NE $\frac{1}{4}$ ) and North half (N $\frac{1}{2}$ ) of Northeast quarter (NE $\frac{1}{4}$ ) of Section Thirteen (13) Township Two (2) North, Range Seven (7) West, Vernon Parish, Louisiana; and that its title thereto be confirmed according to law, and particularly under the Act of Congress of March 2, 1896.

And defendant prays for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

BLANCHARD, SMITH & PALMER,

J. G. PALMER,

W. W. THOMPSON,

Solicitors for Defendant.

W. R. Pickering Lumber Company.

ENDORSED: No. 961 In Equity. United States District Court for the Western District of Louisiana. United States of America vs New Orleans Pacific Railway Company and W. R. Pickering Lumber Company, and River Land & Lumber Company. MOTION TO DISMISS and ANSWER OF DEFT., W. R. Pickering Lumber Co. Filed Apr. 20, 1915, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

18 In the District Court of the United States for the Western District of Louisiana.

No. 961. In Equity.

UNITED STATES OF AMERICA,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY

and

W. R. PICKERING LUMBER COMPANY

and

RIVER LAND & LUMBER COMPANY.

And now comes the River Land & Lumber Company, one of the Defendants herein, and appearing separately, moves the Court to dismiss and reject the bill filed herein, because an Act of Congress approved March 3, 1891, provides that all suits by the United States to vacate and annul any patent issued prior to its passage should be brought within five years from the passage thereof. And an Act of Congress approved March 2, 1896, provides that all suits by the United States, to vacate and annul any patent theretofore issued under any railroad or wagon road land grant, should be brought within five years from the date of the passage of said Act.

And your respondent shows, that as by said bill appears, the patent herein sought to be annulled, was issued prior to the passage of both the said Acts of Congress of



the United States; that is to say, on August 8, 1889, as said bill alleges, and the bill herein, being a suit to vacate and annul the said patent, was filed in your Honorable Court on the 21st day of January 1915, and that hence under both the said Acts of Congress, the time within which the Government could have brought this suit to vacate and annul the patent issued to the New Orleans Pacific Railway expired long prior to the filing of this bill in your Honorable Court and to the issuance of the subpoena herein.

Defendant further pleads against the right and propriety of the United States to prosecute its said bill the doctrine of equitable laches and of estoppel, and shows that a period of twenty-six years has elapsed since the issuance of said patent, during which time, no attack has been thereon; and in faith whereof, the title to the lands covered thereby, has been transferred and has passed by mesne conveyance into the hands of remote bona fide purchasers: That the United States, complainant, is only a formal party and that the suit is brought in its name to enforce the pretended rights of individuals, and no interest of the Government is involved. And the litigation is being carried on, in behalf of and for the benefit of private parties who claim to have equitable titles or rights in or to the lands by virtue of prior settlements or donations, and that the effect of a decree, cancelling this patent, would be simply to enable some other parties to perfect any equitable titles which they may have after twenty-six years has elapsed since the patent was issued, and such individuals are the real parties in interest in this litigation, and the United States, complainant, is only a nominal and is not the real party in interest.

Neither Thomas W. Gregory, Attorney-General of the United States, nor George Whitfield Jack, United States Attorney for the Western District of Louisiana, had right or authority to bring or institute this suit for the reason that the United States Government has no interest, and alleges no interest in the property involved in this suit, and it is not alleged that any fraud has been perpetrated on the Government to its prejudice, nor is it alleged that



the Government is under obligation to any individual to make his title good by setting aside fraudulent patent, nor is it alleged that there is any duty on the part of the Government to the party requiring this action to be brought.

19 And this defendant therefore tenders this its motion in limine based upon the prescription and limitation set forth and the equitable laches and estoppel above pleaded, and the plea to the right of the Attorney-General or the District Attorney to institute this suit, and prays that the same may be separately heard and disposed of before trial of the case, and that upon said hearing, it be sustained and the bill dismissed and rejected at the cost of complainant.

And now, reserving the benefit of the above and foregoing pleas of prescription and limitation, laches and estoppel, and the plea to the right of the Attorney-General or the District Attorney to bring this suit, and only in case same should be overruled, this defendant, the River Land & Lumber Company, answers with reference to the North East Quarter of North West Quarter, Section Thirteen (13) Township Two (2) North, Range Seven (7) West, described in the Bill of Complaint, which forty acres is owned by this defendant, and with reference to same, says:

1.

Defendant admits the allegations of Section One (1) of the Bill; except that it specifically denies that the land involved in this cause, viz, the Northeast Quarter (NE $\frac{1}{4}$ ) of the North WEST Quarter (NW $\frac{1}{4}$ ) of Section Thirteen (13) Township Two (2) North, Range Seven (7) West, Louisiana, Meridian, situated in Vernon Parish, Louisiana, was illegally and erroneously included in the said patent of the United States to the New Orleans Pacific Railway Company of August 8, 1889; and they deny that said patent should be cancelled, in so far as it covers and embraces said land.

2.

Defendant admits the allegations of Section Two (2)

of the Bill; except as to the confirmation of the Grant, by Act of Congress of February 8th, 1887, and shows that Complainant was completely and irrevocably divested of title by the Act of Congress March 3, 1871, and by the issuance of the patent of August 8, 1899; and Defendant avers that the Public Land Office was open and in existence at Natchitoches, Louisiana, in whose district and under whose jurisdiction the land was situated; that the said land was surveyed and the hereinafter mentioned Jasper J. Brown could, and should have filed his homestead application within the delays prescribed by law.

## 3.

Defendant admits that the words quoted in Paragraph Three (3) of the Bill are an exact quotation of the provision to Section Two (2) of the Act of February 8, 1887, but denies that the said act applied to lands at that time patented as well as lands thereafter to be patented.

## 4.

Defendant admits the allegations of Section Four, (4) of the bill as matters of fact, but denies the legal conclusions that Complainant seeks to draw therefrom.

## 5.

Defendant admits the allegations of Section Five (5) of the bill as matters of fact, but specifically denies that this Defendant The River Land & Lumber Company, is or can be bound or precluded in any way by said agreement of August 3, 1892, or any of its provisions or clauses, because the New Orleans Pacific Railway Company had prior to that date, sold such land to this Defendant's author in title, Horace C. Brewster as will be hereinafter more clearly set forth.

## 6.

Defendant denies all and singular, the allegations of Section Six of the Bill, especially in so far as they in any

way affect the Northeast Quarter (NE $\frac{1}{4}$ ) of the Northwest quarter (NW $\frac{1}{4}$ ) of said Section Thirteen (13), being the land embraced in this suit.

20

7

This Defendant is not sufficiently informed as to the allegations of Paragraph Seven, (7) of the bill, to enable it to answer and therefore denies same, and further answering, avers that for the reasons set forth in the preceding paragraphs of this answer, and particularly in paragraphs five and six, defendant is not affected or precluded by the matters named in Section Seven, of the bill, because said matters are alleged to have occurred more than two (2) years after the New Orleans Pacific Railway Company had sold the land to Defendant's author, Horace C. Brewster.

8.

Defendant denies that complainant is entitled to any relief by virtue of the Act of Congress of February 8, 1887, because:—

(1) The lands here in question were and are not, have never been, and cannot be held, deemed or considered to be subject to or in any manner affected by the said Act of February 8, 1887, or by any of the terms, provisions or conditions thereof.

(2) The said land was not possessed as alleged by actual settlers nor the heirs or assigns of actual settlers under the terms of said proviso.

(3) The property involved in this suit was selected by the New Orleans Pacific Railway Company as indemnity land under the terms of the Act of Congress, March 3, 1871, whereas the proviso of Section Two of the Act of February 8, 1887, applies only to granted or placed land and not to lieu or indemnity lands.

(4) Defendant further represents that the New Orleans Pacific Railway Company complied with all the Acts of Congress under which the said lands were obtained, and

that the said patent vested in said New Orleans Pacific Railway Company and in its transferees and assigns absolute and indefeasible title to the said land as shown by the recitals of the said patents, the said lands having been duly selected from the indemnity limits of the said grant and the said selection having been duly approved.

Defendant further shows that the said sales and said transfers above set forth were made in good faith, for a valuable consideration, without notice of any defect in the title and vested complete legal and indefeasible title in the said vendees on the execution and passing of the said Acts of Conveyance, respectively, and that said vendors were each seized in fee thereof; and that during the said ownership as above set forth, each held, owned and possessed the lands peaceably as the sole, legal and bona fide owners thereof. That the consideration expressed in said deeds attached hereto and made a part hereof, were bona fide and truly paid and that the vendees in said deeds were without notice of any outstanding claims to said land or defects in said title previous to and down to the time of paying said consideration, and the delivery of said deeds; and defendant denies that it, or its author in title, had any notice of any settlement, occupancy of, or that any homestead pre-emption or other claims had attached to the land. And further shows that the title to the said lands under the patent issued to the New Orleans Pacific Railway Company has been confirmed, by the Act of Congress of March 3, 1887, March 3, 1891, and of March 2, 1896, the latter of which provides in the first section thereof, that suits to annul any patents to lands heretofore erroneously issued to any railroad or wagon road grant, shall only be brought within five years from the passage of the Act, and to vacate and annul any patents thereafter issued within six years from the date of the issuance of said patent, and the said Section further provides:

"But no patent to any lands held by bona fide purchasers shall be vacated and annulled, but the right and title of such purchaser is hereby confirmed."

21 Which said Acts of Congress, and the several provisions thereof, and especially the portion of the Act of March 2, 1896 just above quoted, are pleaded as muniments of title of defendant, specially confirming, if any confirmation is necessary, the title to the lands described by complainant, as bona fide purchasers of same, by virtue of the chain of title as above set forth.

And Defendant further pleads the provisions of the said Acts of Congress, March 3, 1887, March 3, 1891, and March 2, 1896 in bar of this suit, and shows that any right which complainant may have had at any time to institute this suit, has long since prescribed.

(4) The awarding and issuance of the aforesaid patent by the United States, through its duly authorized department, was a final and conclusive adjudication by a legally constituted tribunal, charged by law with the duty of determining all the facts legally prerequisite to the issuance of said patent, and said adjudication was final and conclusive and is not open to said attack as is set forth by complainant herein, or at the time hereof.

(5) This Defendant further alleges that the sales and transfers of the land in question above set forth, were made in good faith and for a valuable consideration, and vested a complete, legal and indefeasible title in the vendee of the New Orleans Pacific Railway Company, and in the various vendees, predecessors in title of this defendant, and alleges that on the execution and passing of the said acts of conveyance respectively, that during the time of ownership of each of the predecessors in title of this defendant, each thereof, held, owned and possessed the said lands peaceably as the sole, legal and bona fide owners thereof; and this defendant alleges that it is a bona fide purchaser of the lands in question, having paid therefor the full, reasonable cash value of said land, at the date of its purchase, and alleges that even if it should be proven that any error or irregularity was made in the issuance of the patent by the Government to the New Orleans Pacific Railway Com-

pany, yet such error or irregularity can not be imputed to this defendant, defendant being a bona fide purchaser for value without notice of such error or irregularity and in actual ignorance thereof.

9.

Defendant denies all the allegations of Section Nine (9) of the Bill.

10.

Defendant denies that complainant is entitled to the relief prayed for in the prayer to the Bill.

11.

Further answering, defendant avers that it has owned and possessed the land in good faith under deeds trans-lative of property duly recorded in the Conveyance Books of Vernon Parish, Louisiana, by virtue of the following chain of title, viz:—

1. United States of America to the New Orleans Pacific Railway Company, patent dated August 8, 1889, filed June 30, 1890, recorded Book "F" p. 107.
2. New Orleans Pacific Railway Company by E. B. Wheelock, President, and John F. Dillon and H. M. Alexander, Trustees of the Land Grant Mortgage, to Horace C. Brewster, dated June 13, 1890, filed June 30, 1890; recorded Book "F", pp. 107-109.
3. Horace C. Brewster, individually and as trustee to Charles L. Pack, April 10, 1900; filed April 20, 1900; recorded Book "p" pp. 151-152.
4. Charles L. Pack to George R. Nicholson, November 24, 1903, filed February 26, 1904, recorded Book 3, p. 509.
- 22      5. George R. Nicholson to Charles L. Pack, August 8, 1905, filed January 7, 1907, recorded Book 11, p. 321.

6. Charles L. Pack to Edward B. Greene, July 27, 1909; filed July 5, 1910, recorded Book 23, p. 47.
7. Edward B. Greene to River Land & Lumber Company, July 27, 1909, and December 2, 1909, filed July 15, 1910. Recorded Book 23, p. 64.

Defendant attaches hereto, as a part of this answer, a certified copy of the patent from the New Orleans Pacific Railway Company, and a certified copy of each of the deeds named and described in the chain of title above set forth, and incorporates them into and makes them part of this answer.

WHEREFORE DEFENDANT PRAYS: That the complainant's demand be rejected at its cost and that the defendant, the River Land & Lumber Company, be quitted in its ownership and possession of the siad land, viz: The North East Quarter (NE  $\frac{1}{4}$ ) of North West Quarter (NW  $\frac{1}{4}$ ) of Section Thirteen (13) Township Two (2) North, Range Seven (7) West, Vernon Parish, Louisiana; and that its title thereto be confirmed according to law, and particularly under the Act of Congress of March 2, 1896.

And defendant prays for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

H. H. WHITE

R. F. WHITE

WHITE & THORNTON & HOLLOMAN

Solicitors for Defendant

River Land & Lumber Co.

ENDORSED: No. 961. Equity. U. S. D. C. West, Dist. La. U. S. vs. N. O. P. Ry. Co. Pickering Lbr. Co. River Land & Lbr. Co. ANSWER ON PART OF RIVER LAND & LBR. CO. Filed Apr. 2, 1915, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.



23

In the District Court of the United States,  
for the Western District of Louisiana

No. 961 In Equity.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY

and

W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND & LUMBER COMPANY.

To the Judge of the District Court of the United States for  
the Western District of Louisiana:

Now comes Mrs. Josephine Brown, widow of the late  
Jasper J. Brown, whose post office address is Leesville,  
and who resides in Vernon Parish, State of Louisiana,  
and asks leave of this court to file in the above numbered  
and entitled cause, this her intervention, and for cause of  
action states:

1.

That the United States, by Act of Congress approved  
March 3, 1871, (16 Statutes at Large, 579), granted cer-  
tain lands therein described to the New Orleans, Baton  
Rouge & Vicksburg Railroad Company, and thereafter the  
said New Orleans, Baton Rouge & Vicksburg Railroad Com-  
pany assigned its rights under the said grant to the New Or-  
leans Pacific Railway Company, a defendant in this cause;  
that the said assignment of said land grant was ratified and  
confirmed by Act of Congress approved February 8, 1887  
(24 Statutes at Large, 391), as to that portion of the grant  
not declared forfeited by said last-named act, and the lands  
granted were to be located in accordance with the maps filed  
by the said New Orleans Pacific Railway Company in the  
Department of the Interior of the United States on October  
27, 1881, and November 17, 1882, which indicated the defi-  
nite location of the line of road of said railway company.



## 2.

Intervenor further states that the rights of actual settlers on said lands at the time of the definite location of the road were preserved to them, both in the original grant, by said Act of March 3, 1871, and by said Act of February 8, 1887, confirming same, such lands, so occupied by settlers at the date of the definite location of said railroad, being, under the terms of both acts, excepted from the grant;

24           That such exception from the original grant is contained in Section 9 of said Act of March 3, 1871, restricting the lands conveyed to those "where the same shall not have been sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

That said exception from the grant in the Act of February 8 1887, confirming same, is contained in the second section in the following words, to-wit:

"That all said lands occupied by actual settlers at the date of the definite location of the said road and still remaining in their possession or in the possession of their heirs or assigns shall be held and deemed excepted from said grant and shall be subject to entry under the public land laws of the United States."

## 3.

That the third section of the said Act of Congress of February 8, 1887, provided that the confirmation of the grant to the said New Orleans Pacific Railway Company should take effect when said company should accept the provisions of the Act in the manner therein described and agree to discharge all of the duties and obligations imposed upon its assignor by the aforesaid Act of March 3, 1871, which made the original grant to that company, and that the said defendant, New Orleans Pacific Railway Company, thereafter, on April 20, 1887, filed with the Secretary of the Interior of the United States such acceptance and agreed

to discharge all the obligations and duties in the Act of Congress referred to.

## 4.

That the said New Orleans Pacific Railway Company to facilitate an early adjustment of the land grant, filed in the Department of the Interior of the United States an agreement bearing date of August 3, 1892, the third section of which provides:

"That in the cases where patents have issued to said railway company for lands which have been or may hereafter be adjudged by the Commissioner of the General Land Office to have been in possession of actual settlers at the date of the definite location of said railway company's road, and title is in said railway company, and said trustees agree to make without delay, conveyance thereof to the United States, and where such have been sold by said railway company to third persons, said railway company undertakes to recover title thereto, without delay, and convey the same to said settlers or to the United States; and the said trustees undertake to join in such conveyances and do all acts necessary on their part to enable the railway company to carry out this agreement and stipulation."

## 5.

Intervenor further states that on the 3rd day of March, 1885 and August 8, 1889, a certain land patent was issued by and in the name of the United States, as grantor granting to said New Orleans Pacific Railway Company as grantee certain lands in Vernon Parish, State of Louisiana, which said patent included among other lands, the following described tracts:

Northeast Quarter of Northwest Quarter, and North half of Northeast Quarter, and Southwest Quarter of the Northeast Quarter, Section 13, Township 2 North, of Range 7 West, Louisiana Meridian, (NE $\frac{1}{4}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$

NE $\frac{1}{4}$  & SW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 13, T. 2 N., R. 7 W.)  
 25 which said tracts of land were, at the time of the  
 filing of the said maps of the definite location of the  
 line of road of the said railway company and at the time of  
 the passage of the Act of Congress of February 8, 1887,  
 aforesaid, occupied by and in the possession of Jasper J.  
 Brown, an actual settler qualified to enter public  
 lands of the United States under the homestead  
 laws, and who was then and there claiming said  
 land under said laws; and the action of the Land Department  
 of the United States in including said land in the patent  
 which issued to the said railway company as aforesaid, was  
 erroneous and without authority of law.

## 6.

Intervenor further states that on the \_\_\_\_\_ day of  
 the said \_\_\_\_\_ filed an applica-  
 tion to enter the said land under the homestead laws of  
 the United States, in the local land office of the United States  
 at Natchitoches in the State of Louisiana; that the New  
 Orleans Pacific Railway Company, the defendant herein,  
 opposed and contested the application of the said Jasper  
 J. Brown, settler, and that said contest, after a hearing had  
 in pursuance of the rules and regulations of the Land De-  
 partment of the United States, was decided in favor of the  
 said settler and against the said railway company by the  
 Commissioner of the General Land Office of the  
 United States on the 1st day of December, 1891, the Com-  
 missioner holding that said land was erroneously patented  
 to the said New Orleans Pacific Railway Company, it hav-  
 ing been occupied by an actual settler, Jasper J. Brown, at  
 the time of the definite location of the road, and still remain-  
 ing in the possession of Jasper J. Brown, at the time of  
 the said contest, as shown by docket number \_\_\_\_\_  
 certified copies of which application and all  
 proceedings relating to said contest will be produced on the  
 trial hereof; that the said New Orleans Pacific Railway  
 Company was duly notified by the Commissioner of the  
 General Land Office of his said decision, and was requested

to restore the title to said land to the United States and to comply with the conditions of its agreement of August 3, 1892, aforesaid, but the said company failed to restore such land and to comply with the terms of its said agreement.

26

7.

Intervenor avers that sometime prior to 1876 Wesley White, an actual settler, built a home and dwelling on the land involved in this suit; that in the year 1876 he sold his improvements and homestead right to Stephen H. Hagen, who took possession of the land and continued in such possession until 1880, when he sold his improvements and homestead rights to Jasper J. Brown, who was qualified to enter public lands, since deceased, husband of intervenor: that the said Jasper J. Brown and intervenor moved on said land and intended to homestead same and continued to live on said land until the death of Jasper J. Brown, husband of intervenor, in 1895, and that intervenor has continued to live on said land until 1904, after which date she moved off the land, but has remained in possession up to this date through tenants who hold it for her.

27

8.

Intervenor further states that at the time of the definite location of said line of railway the homestead claim of the said Jasper J. Brown, had attached to said described land within the meaning of the exception to the original grant contained in Section 9 of the aforesaid Act of March 3, 1871, and said tract of land was, therefore, excluded from said grant under said act, and said tract was likewise excluded by Section 2 of said confirmatory Act of February 8, 1887.

9.

Intervenor further states that the said New Orleans Pacific Railway Company, in expressly accepting the terms of said Act of February 8, 1887, as alleged in paragraph 4, and later in agreeing to reconvey to the United States or to

actual settlers the lands erroneously patented to it, as alleged in paragraph 4, recognized the fact that said lands, so erroneously patented to it, were held in trust for such actual settlers, their heirs and assigns, and the said New Orleans Pacific Railway Company and its assigns are now estopped from denying that such lands are, in fact, so held in trust for such original settlers, their heirs and assigns.

## 10.

Intervenor further states that the land hereinabove described is now claimed by W. R. Pickering Lumber Company, and River Land & Lumber Company, under mesne conveyances from the said New Orleans Pacific Railway Company.

Intervenor further states that neither the New Orleans Pacific Railway Company nor the defendants, W. R. Pickering Lumber Company and River Land & Lumber Company, nor any one else claiming any right in and to said land now and by virtue of the patent which issued as aforesaid to the defendant railway company, is entitled, in equity, to maintain any such right, title or interest in and to said land, or any part thereof; that such rights as were acquired under said patent were with full notice and knowledge of the rights and equities of your intervenor, as herein set forth.

## 11.

That intervenor is now ready and has always been ready and willing to pay the defendant, the New Orleans Pacific Railway Company, or to the other defendant, such sum of money as this court may find was expended by them or either of them in securing from the United States the patent to the land hereinbefore described, and intervenor hereby offers to pay the proportionate amount chargeable against said land as expenses in procuring the patent therefor from the United States, but inasmuch as said land was obtained with other tracts, intervenor is not informed as to the proportionate expenses chargeable therefor, nor can he ascertain the same, for which reason he is unable to pay or bring into court any fixed or definite sum of money, but avers that he is ready and willing to pay into court to the

proper defendant whatever amount shall be found to represent the sum expended in securing the patent for the land.

28

12.

WHEREFORE, intervenor prays that he be permitted to intervene in this cause; that the patent heretofore issued to the said New Orleans Pacific Railway Company as aforesaid be declared to be held in trust for your intervenor; that he be adjudged and decreed to be the owner of said land, and that said defendants be decreed to make, execute and deliver to your intervenor the proper deed or deeds conveying all their right, title and interest to the said land, or, in the event of their failure to do so, that the Clerk or some other person duly thereunto appointed by the court make such deed in their stead, and that your intervenor may have such further and other relief as the nature of the cause may require.

S. M. ATKINSON

Attorney for Intervenor.

### ORDER.

The above and foregoing being considered, it is ordered that Mrs. Josephine Brown be, and she is hereby permitted to file and prosecute her intervention in this cause.

This done and signed at Shreveport, Louisiana, this 2nd day of April, 1915.

ALECK BOARMAN

United States Judge.

Service acknowledged and citation waived this 17th day of March, 1915, reserving all rights, equities, defences and legal delays, and waiving naught else hereby.

BLANCHARD, SMITH & PALMER

Attorneys for W. R. Pickering Lumber Co

Service acknowledged and citation waived this day of March, 1915, reserving all rights, equities, defences and legal delays, and waiving naught else hereby.

HUDSON, POTTS, BERNSTEIN & SHOLARS

Attorneys for N. O. Pac. Ry. Co.

Service acknowledged and citation waived this 29 day of March, 1915, reserving all rights, equities, defences and legal delays, and waiving naught else hereby.

WHITE & THORNTON & HOLLOMAN  
Attys. for River Land & Lbr. Co.

ENDORSED: No. 961 In Equity. United States District Court, Western District of Louisiana. United States vs New Orleans Pacific Railway Company and W. R. Pickering Lumber Co. and River Land & Lumber Co. INTERVENTION OF Mrs. JOSEPHINE BROWN. Filed Apr. 2, 1915, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

29 In the District Court of the United States  
for the Western District of Louisiana.

No. 961 In Equity

UNITED STATES OF AMERICA,

vs.

THE NEW ORLEANS PACIFIC RAILWAY COMPANY  
W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND & LUMBER COMPANY.

Now comes the United States, and, for answer to intervention herein filed by Mrs. Josephine Brown, admits the allegations of same.

GEO. WHITFLED JACK  
United States Attorney.

ENDORSED: No. 961. United States District Court, Western District of Louisiana. United States vs New Orleans Pacific Ry. Company, W. R. Pickering Lbr. Company and River Land & Lumber Company. ANSWER OF U. S. TO INTERVENTION OF MRS. JOSEPHINE BROWN. Filed Apr. 30, 1915, Leroy B. Gulotta, Clerk U. S. District Court, West Dist. of Louisiana.



30

In the United States District Court,  
Western District of Louisiana  
Shreveport Division.

No. 961 In Equity.

UNITED STATES OF AMERICA,  
Plaintiff.

vs.

THE NEW ORLEANS PACIFIC RAILWAY COMPANY  
W. R. PICKERING LUMBER COMPANY,  
RIVER LAND & LUMBER COMPANY,  
Defendants.

The Separate Answer of the New Orleans Pacific Railway Company to the Intervention of Mrs. Josephine Brown in the above entitled and numbered cause.

To the Judge of the United States District Court, in and for the Western District of Louisiana:

Now comes The New Orleans Pacific Railway Company, defendant in the intervention of Mrs. Josephine Brown therein, and opposes the allowance of the intervention of the said Mrs. Josephine Brown, therein, for the reason that the same is unnecessary, and the relief sought is the same as in the original bill, and the filing of the intervention is an attempt on the part of the settler claimant alleged in the original bill to supply the interest and authority and establish the duty and right of the Government to prosecute this suit at all, the lack of which interest, authority, right and property has been questioned by special pleas filed in the original suit, and for these reasons and for the additional reason that this intervention, illegal, unauthorized, improper and not warranted by the facts, the pleadings, the practice nor the law. Therefore, this defendant objects to the filing and allowance of the same, and prays that the Honorable Court reject the same at the cost of the said intervenor.



And this defendant moves the Court to reject the intervention herein by Mrs. Josephene Brown, if the same should be allowed and considered, and in that event only, 31 because the Act of Congress of March 3, 1887, (24 Stat. L., Ch. 376) ; March 3, 1891, (26 Stat. L. 1093) ; and March 2, 1896, (29 Stat. L. 42, ch. 39), ordained and established a time limited to five years as to previously issued patents, and six years as to subsequently issued patents within which all suits by the United States to vacate and annul any patent erroneously issued under any railroad or wagon road land grant, should be brought. And, this defendant shows as by the original bill in the said intervention appears, that the patent herein sought to be annulled was issued prior to all of said acts aforesaid, and since the said issuance of the same there has elapsed more than the statutory time allowed for attacks thereon, and that the purported equitable claims of this intervenor to the said land are not within the meaning or protection of any laws, jurisprudence or acts of Congress, and do not in any way interrupt or affect the run of said prescription, limitation and confirmation established by said Acts, which prescription, limitation and confirmation is hereby specially pleaded, not only in bar of the action and this intervention, but affirmatively as a defense thereto by this defendant and its assigns.

Defendant further pleads against the right and propriety of the United States to prosecute its said bill, or of this intervenor to prosecute said intervention, the doctrine of laches and equitable estoppel, and shows that the period of thirty years has elapsed since the issuance of the said patent, during which time no attack has been made thereon, and in faith whereof the title to the land covered thereby has been transferred and has passed by mesne conveyances into the hands of remote and bona fide purchasers, and in reliance thereon one of the chief industries of the State of Louisiana has been built, which would be utterly destroyed by successful issue of these attacks by the Government and these intervenors upon the title of this defendant company

who has a direct interest in regard to the same on account of the Acts of Congress aforesaid.

This defendant, therefore, tenders its motion in limine based on the description and limitation and confirmation above set forth and the equitable laches and estoppel above pleaded, and prays that the same may be separately heard and disposed of before the trial on the merits of this cause, and upon the said hearing these pleas be sustained and the bill and intervention be dismissed and rejected at the cost of the plaintiff and the intervenor.

And now, reserving the benefit of the above and foregoing pleas of prescription, laches and estoppel, and only in case the same should be overruled, this defendant answers the allegations of the intervention as follows:

1.

This defendant admits the allegation of the first clause of the first section of intervenor's petition, relative to the original grant by Congress to the New Orleans, Baton Rouge & Vicksburg Railroad Company and the assignment by said company of its rights under the grant of this defendant.

This defendant also admits the existence of the Act of Congress of February 8, 1887 (24 Stat. L. 391) as an historical fact and law existing on the statute books, but denies each and every allegation of the said section of plaintiff's bill, and each and every inference deduction or conclusion sought to be drawn upon said Act in said first section of the intervention, and especially denies that "the lands granted" were to be located in accordance with the maps filed by the New Orleans Pacific Railway Company in the Department of the Interior as alleged, and denies especially that said maps indicated the definite location of the said railroad in the sense, tenor and effect alleged and inferred in the said section of the said intervention.

2.

Defendant admits the existence of the sections of the Acts of Congress quoted in Section 2 of the Intervention,

but denies each and every deduction, inference and conclusion intervenor seeks to draw therefrom, and especially denies that the rights of intervenor were preserved or protected as he alleged.

## 3.

Defendant admits the allegation of the third section of intervenor's petition as an historical fact and as such only.

## 4.

33 Defendant admits the allegation of the fourth section of intervenor's petition as an historical fact and as such only.

## 5.

Defendant admits the issuance of the patent as alleged in the fifth section of the intervention as an historical fact, but denies each and every allegation of said section and each and every inference, deduction or conclusion sought to be drawn therefrom, and especially denies the occupancy and possession of the land as alleged, and the error and unauthorized action of the Land Department as alleged.

## 6.

Defendant is without sufficient information to enable it to affirm or deny the allegations of the sixth paragraph of plaintiff's bill, and, therefore, for the purpose of requiring strict and legal proof of the same on the trial hereof, denies each and every allegation therein contained, and each and every inference, deduction or conclusion sought to be drawn therefrom.

## 7.

Defendant denies each and every allegation of the seventh paragraph of the intervenor's petition and each and every inference, deduction or conclusion sought to be drawn therefrom, and on trial hereof will require strict and legal proof of the same.

## 8.

Defendant denies each and every allegation of fact contained in the eighth section of the intervenor's bill, and de-

denies each and every inference, deduction or conclusion either of law or of fact to be sought drawn therefrom, and especially denies that the claim of Mrs. Josephene Brown to the said land, if attached to the land within the meaning of any Act of Congress, and denies expressly that the land was in any sense excluded from the grant for any reason whatsoever.

## 9.

Defendant avers that the allegations of the ninth section of intervenor's bill are conclusions of law and not proper allegations, and, therefore, it is not called to plead in regard to the same; but, in so far as it should so plead, it denies each and every phase and portion of the same.

34

## 10.

This defendant is not advised as to the present owner of the said land, but for the purpose of requiring strict and legal proof of the same, denies the first paragraph of the tenth section of the intervenor's bill. The second paragraph of the same being an allegation of a legal conclusion, this defendant does not feel that it is required to plead to the same; but, in so far as it so require, it denies each and every phase and portion thereof. It specially denies notice or knowledge such as alleged therein.

## 11.

Defendant denies each and every allegation of the eleventh section of intervenor's petition and each and every inference, deduction or conclusion sought to be drawn therefrom.

## 12.

Defendant denies that intervenor is entitled to the relief sought in the prayer of his petition. Especially denies that his intervention should be received or allowed. Avers that if it is considered, it should be dismissed upon the pleas herein plead in limine, and if considered on the merits the prayer of his petition should be disallowed, and that the title of this defendant and its assigns should be quieted and confirmed.

## 13.

Further answering, this defendant shows that the intervenor is not entitled to the relief sought by virtue of the Act of February 8, 1887, or any other Act or law, because:

(a) The lands here in question were and are not, have never been and cannot be held, deemed or considered to be or to have been subject to or in any manner affected by the said Act of Feb. 8, 1887, or any of its terms, provisions or conditions as is contended for by the plaintiff, but that its title thereto vested under and by virtue of and rests upon previously existing laws, to wit: the act of March 3, 1871.

(b) The said land was not possessed by actual settlers or the heirs or assigns of such actual settlers under the terms of the said proviso of section two  
35 of the said act of Feb. 8, 1887.

(c) The said Act of Feb. 8, 1887, does not in any manner apply to lands lying within the indemnity limits of said grant.

(d) The said Act of Feb. 8, 1887, does not apply to lands which were patented previously thereto except to confirm the titles to such lands and to permit the operation of the so-called "Blanchard-Robinson Agreement" as to such lands under the terms and provisions of the said Act.

(e) Defendant further shows that it complied with all of the Acts of Congress under which the said lands were obtained, and that the title which vested in it thereby was absolute and indefeasible, as evidenced by the said patents.

(f) Defendant shows that the prescription, limitation and confirmation established by the Acts of Congress plead in defendant's exception and motion in limine No. C supra, operates as a rule of property and confirms and establishes property rights in this defendant and its transfers and as such said Acts are hereby set forth and affirmatively plead.

(g) Defendant avers that the construction of Act of Congress of Feb. 8, 1887, which is urged by the plaintiffs,

would render the Act unconstitutional, null and void, as divesting vested rights, impairing the obligations of contracts, taking property without due process of law, and denying the equal protection of the laws, all in violation of and contrary to the provisions, in letter and spirit, of section ten of article one and the fifth amendment to the constitution of the United States, which un-  
 36                   constitutionality is hereby especially urged and plead.

(h) Defendant shows that there was at and prior to the passage of the Act of March 8, 1871, an United States District land office open and existing at Natchitoches, within whose jurisdiction the lands here in question were located, and that these said land had been surveyed and the lines established by an official United States survey and well known generally and available and that there was nothing to prevent any claimant from taking any and all steps necessary and prerequisite under the public land laws to initiate his claim thereto, to file any homestead application and pre-emption claim or assert any right or claim which he might have under the laws for the disposition of the public domain, which action defendant alleges these settlers should have taken and not taking preserved no rights as against the Government or its grantees and having obtained none under any subsequent Acts of Congress or otherwise cannot now be heard to question the legal title.

WHEREFORE, this defendant prays, as it prayed above, that this intervention be denied and not allowed, but that if considered that the motions in limine plead first above be so heard and sustained, and defendant further prays that after trial hereof, in case such a trial be had, that the answer and the affirmative defenses herein set up be held and deemed good in law and in equity, and that a decree be entered herein confirming and quieting the patent issued to this defendant, New Orleans Pacific Railroad Company, for its own benefit and for the use and benefit of its assigns and transferees, and rejecting and dismissing at its own cost the petition and demands of the plaintiff's herein.

37 Defendant further prays, for all equitable and general relief in the premises as is just and proper to this Honorable Court seems meet.

HUDSON, POTTS, BERNSTEIN & SHOLARS  
Attorneys for the N. O. Pac. R. R. Co.

ENDORSED: No. 961 In Equity United States District Court, Western District of Louisiana. Shreveport Division. United States of America, Plaintiff versus The New Orleans Pacific Ry. Co. and W. R. Pickering Lbr. Co. & River River Land & Lbr. Co Defendants. Intervention of MRS. JOSEPHENE BROWN. ANSWER OF THE NEW ORLEANS PACIFIC RAILWAY COMPANY to Intervention of Mrs. Josephene Brown. Filed Apr. 26, 1915, Leroy B. Gulotta, Clerk U. S. District Court, West Dist. of Louisiana.

38 In the District Court of the United States  
for the Western District of Louisiana.

No. 961 In Equity.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY  
and

W. R. PICKERING LUMBER COMPANY  
and

RIVER LAND AND LUMBER COMPANY,  
Defendants.

And now comes the W. R. Pickering Lumber Company, one of the defendants herein, and appearing separately moves the Court to dismiss and reject the intervention filed herein by Mrs. Josephene Brown, widow of the late Jasper J. Brown, because an Act of Congress, approved March 3, 1891, provides that all suits by the United States to vacate



and annul any patent issued prior to its passage should be brought within five years from the passage thereof, and an act of Congress, approved March 2, 1896, provides that all suits by the United States to vacate and annul any patent theretofore issued under any railroad or wagon road land grant should be brought within five years from the date of the passage of the said act.

And your respondent shows that, as by the original bill and the said intervention appears, the patents herein sought to be annulled, were issued prior to both of said acts of Congress of the United States, that is to say, on March 3rd, 1885 patent issued to Southwest Quarter (SW $\frac{1}{4}$ ) of Northeast quarter (NE $\frac{1}{4}$ ), Section Thirteen (13) Township Two (2) North, Range Seven (7) West, and on August 8, 1889, patent issued to North half (n-) of Northeast quarter (NE $\frac{1}{4}$ ) of Section Thirteen, Township Two (2) North, Range Seven (7) West, and this being a suit to vacate and annul the said patents, the original bill was filed in your Honorable Court on the 21st day of January, 1915, and this intervention subsequent thereto; and that hence under both the said Acts of Congress, the time within which the Government should have brought this suit to vacate and annul the patents issued to the New Orleans Pacific Railway Company, and the time within which this intervention could be brought, either as an intervention or as a direct action, expired long prior to the filing of this bill, or of this intervention in your Honorable Court, and to the issue of the subpoena herein.

Defendant further pleads against the right and propriety of the United States to prosecute its said bill, or of the intervenor to prosecute the said intervention, the doctrine of equitable laches, and of estoppel, and shows that the period of thirty years has elapsed since the issuance of patent to Southwest quarter (SW $\frac{1}{4}$ ) of Northeast quarter (NE $\frac{1}{4}$ ), Section Thirteen, Township Two North, Range Seven West, and a period of Twenty-six years has elapsed since the issuance of the said patent covering the North half (N-) of Northeast quarter (NE $\frac{1}{4}$ ), Section Thirteen, Township two (2) North, Range Seven West, during which



time no attack has been made thereon, and in faith thereof the title to the land covered thereby has been transferred, and has passed by mesne conveyances into the hands of remote bona fide purchasers.

And this defendant therefore tenders this, its motion in limine, based on prescription and limitation above set forth, and the equitable laches and estoppel above pleaded, and prays that same may be separately heard and disposed of before the trial of the case, and that upon the said hearing it be sustained, and the bill and intervention dismissed and rejected at the costs of the complainant and intervenor.

39 And now, reserving the benefit of the above and foregoing pleas of prescription, limitation, laches and estoppel, and only in case same should be overruled, this defendant answers the allegations of the intervention as follows:

#### I.

Defendant admits the allegations of Sec. 1, of the intervention.

#### II.

Defendant denies the general statements of law contained in section 2 of the intervention, and denies that intervenor is entitled to claim any right or benefit by virtue of the same.

#### III.

Defendant admits the general statements of law contained in Section 3 of the intervention, but denies that intervenor is entitled to claim any right or benefit by virtue of the same.

#### IV.

Defendant admits the allegations of Section 4 of the intervention as matters of fact, but specifically denies that this defendant, W. R. Pickering Lumber Company, is, or can be, bound or precluded in any way by the said agreement of August 3, 1892, or any of its provisions or clauses, because the New Orleans Pacific Railway Company had prior to that date sold the said land to this defendant's au-

thor in title, Kisatchie Land Company, as is fully shown in the answer to the original bill filed by defendant herein.

#### V.

Defendant admits the allegations of Section 5 of the intervention, except that defendant denies that the land in question was occupied by and in possession of Jasper J. Brown, or that the said Jasper J. Brown was an actual settler, qualified to enter public land of the United States under the homestead laws, or that he was then and there claiming the said land under the homestead laws, and denies the action of the Land Department of the United States in including the said land in the patent which issued to the said Railway Company was erroneous or without authority in law, and shows that the United States Government was completely and irrevocably divested of title by the Act of Congress of March 3, 1871, and by the issuance of patents on March 3, 1885, and on August 8, 1889, and avers that the Public Land Office was open and in existence at Natchitoches, Louisiana, in whose district and under whose jurisdiction the said land was situated; that the said land was surveyed and lines established, and that the said Jasper J. Brown, if he had been entitled or had desired to do so, could and should have filed his homestead application within the delays prescribed by law; and defendant denies that the provisions of the second section of the Act of Congress of February 8, 1887, apply to lands at this time patented, which land passed under the terms of the Act of March 3, 1871, as above alleged; and because it would divest vested rights and impair obligations of a contract, and therefore violated Article One of Section Ten, and the Fifth Amendment of the Constitution of the United States.

#### VI.

Defendant denies all and singular the allegations of Section Six of the intervention, especially in so far as they in any way affect the North Half of Northeast quarter ( $N\frac{1}{2}$  pf  $NE\frac{1}{4}$ ) and Southwest quarter of northeast quarter ( $SW\frac{1}{4}$  of  $NE\frac{1}{4}$ ), of said Section Thirteen (13), being the land embraced in this suit.

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## VII.

Defendant denies, all and singular, the allegations of Section 7 of the intervention.

## VIII.

Defendant denies, all and singular, the allegations of Section 7 of the interventinn.

## IX.

Defendant denies, all and singular, the allegations of Section 9 of the intervention, and again avers that any acceptance made by the New Orleans Pacific Railway Company, or any agreement to recover and re-convey to the United States or to actual settlers, made after the date on which the New Orleans Pacific Railway Company mortgaged said land on April 17th, 1883, and January 5, 1884, under which mortgages the mortgage creditor sold the said land to Kisatchie Land Company, could or did in any way bind or preclude the said Kisatchie Land Company, or any of its successors in title.

## X.

Defendant admits so much of Section 10 of the intervention as avers that the North half ( $N\frac{1}{2}$ ) of Northeast quarter  $NE\frac{1}{4}$ ) and Southwest quarter of Northeast quarter ( $SW\frac{1}{4}$  of  $NE\frac{1}{4}$ ), a portion of the land in question in this suit is now claimed by the W. R. Pickering Lumber Company under mesne conveyances from the said New Orleans Pacific Railway Company, but specifically denies all and singular the remaining allegations of the said section.

And in this connection, this defendant avers that under the mesne conveyances, it has a good, valid, and perfect title to the said land, and has been in possession thereof, has ranged and paid taxes on same from the year 1903 to date inclusive.

## XI.

Defendant is not sufficiently informed as to the allegations of Paragraph eleven of the intervention to enable it to answer, and therefore denies same.

## XII.

Defendant avers that it has owned and possessed the land in good faith under deeds translativ of property, duly recorded in the Conveyance Books of Vernon Parish, Louisiana, by virtue of the following chain of title, viz:

## SOUTHWEST QUARTER OF NORTHEAST QUARTER:

1. United States to New Orleans Pacific Railway Company, selections dated December 29, 1883, per approved list No. 4 from United States book of entrys.

United States to New Orleans Pacific Railway Company, Patent March 3, 1885, filed July 3, 1885, recorded Book D, page 132.

## NORTH HALF OF NORTHEAST QUARTER:

United States to New Orleans Pacific Railway Company, selections dated December 29, 1883, per approved list No. 6 from United States book of entrys.

United States to New Orleans Pacific Railway Company. Patent dated August 8, 1889, filed April 24, 1890, recorded Book F, page 56.

2. New Orleans Pacific Railway Company to John M. Dillon and Henry M. Alexander, Trustees, mortgage dated April 17, 1883, filed May 3, 1883, recorded Book C, page 50.
3. New Orleans Pacific Railway Company by E. B. Wheelock, President and Wm. N. Nicholson, Secretary, to John M. Dillon and Henry M. Alexander, Trustees, mortgage dated April 17, 1883, filed August 7, 1897, recorded Book E, page 366.
4. New Orleans Pacific Railway Company by E. B. Wheelock, President and Wm. N. Nicholson, Secretary, to John M. Dillon and Henry M. Alexander, Trustees, supplemental mortgage dated January 5, 1884, filed August 10, 1897, recorded Book E, page 390, supplemental to mortgage given April 17, 1883 and on same property.

5. New Orleans Pacific Railway Company by Wm. Grant Special Master and John F. Granger and Geo. S. Clay, Trustees to Kisatchie Land Company, Ltd., special masters sale dated June 28, 1900, filed August 1, 1900, recorded Book P, page 237.

Instrument also recorded Book P, page 501.

6. Kisatchie Land Company, Limited, by R. W. Rogers, President to Florien Giaque, deed dated April 23, 1901, filed May 22, 1901, recorded Book S, page 501, accepted by grantee.
7. Kisatchie Land Company, Limited, to Wm. M. Rhodus, President, duly authorized by resolution hereto annexed, to Florien Giaque ratification dated June 24, 1902, filed July 31, 1902, recorded Book V, page 367.
8. Judgment U. S. Court dated June 9, 1900, filed January 11, 1904, recorded Book 3, page 381, confirming the sale to New Orleans Pacific Railway Company by Wm. Grant special master to Kisatchie Land Company, Limited.
9. Florien Giaque to Wm. Shearer warranty deed dated August 17, 1903, filed August 29, 1903, recorded Book No. 3, page 116.
10. Wm. T. Shearer, wife living, to W. R. Pickering Lumber Company, warranty deed August 20, 1903, filed August 29, 1903, recorded Book No. 3, page 119.

Defendant refers to and adopts the patents to the New Orleans Pacific Railway Company, and a certified copy of each of the deeds named and described in the chain of title above set forth, attached to and incorporated into the answer to the original bill.

### XIII.

Further answering, defendant denies that intervenor is entitled to any relief by virtue of the Act of Congress of February 8, 1887, because:

- (1) The lands here in question were and are not, have never been and cannot be held, deemed, or considered, to

be subject to, or in any manner affected by the said Act of February 8, 1887, or by any of the terms, provisions, or conditions thereof.

(2) The said land was not possessed as alleged by actual settlers nor the heirs or assigns of actual settlers under the terms of the said proviso.

(3) The property involved in this suit was selected by the New Orleans Pacific Railway Company as indemnity land and under the terms of the Act of Congress, March 3, 1871, whereas the proviso of Section Two of the Act of February 8, 1887, applies only to granted or placed land and not to lieu or indemnity lands.

42 (4) Defendant further represents that the New Orleans Pacific Railway Company complied with all the acts of Congress under which the said lands were obtained, and that the said patents vested in said New Orleans Pacific Railway Company and in its transferees and assigns absolute and indefeasible title to the said land, as shown by the recitals of the said patents, the said lands having been duly selected from the indemnity limits of the said grant and the said selection having been duly approved.

(5) Defendant further shows that the said sales and said transfers above set forth were made in good faith for a valuable consideration without notice of any defect in the title and vested complete legal and indefeasible title in the said vendees on the execution and passing of the said Acts of Conveyance respectively, and that said vendors were each seized in fee whereof; and that during the said ownership as above set forth, each held, owned, and possessed the lands peaceably as the sole, legal, and bona fide owners thereof; that the consideration expressed in said deeds attached hereto and made a part hereof were bona fide and truly paid, and that the vendees in said deeds were without notice of any outstanding claims to said land or defects in said title previous to and down to the time of paying said consideration and the delivery of said deeds; and defendant denies that it or its authors in title had any notice of any settlement, occupancy of, or that any homestead, pre-emption, or other



claims had attached to the land. And further shows that the title to the said lands under the patents issued to the New Orleans Pacific Railway Company has been confirmed by the Acts of Congress of March 3, 1887, March 3, 1891, and of March 2, 1896, the latter of which provides in the first section thereof, that suits to annul any patents to lands heretofore erroneously issued to any railroad or wagon road grant, shall only be brought within five years from the passage of the Act, and to vacate and annul any patents thereafter issued within six years from the date of the issuance of said patent, and the said Section further provides:

"But no patent to any lands held by bona fide purchasers shall be vacated and annulled, but the right and title to such purchaser is hereby confirmed."

Which said Acts of Congress, and the several provisions thereof, and especially the portion of the Act of March 2, 1896, just above quoted, are pleaded as muniments of title of defendant, specially confirming, if any confirmation is necessary, the title to the land described by intervenor, as bona fide purchasers of same by virtue of the chain of title as above set forth.

And defendant further pleads the provisions of the said Acts of Congress, March 3, 1887, March 3, 1891, and March 2, 1896, in bar of this suit, and shows that any right which intervenor may have had at any time to institute this suit, has long since prescribed.

(6) The awarding and issuance of the aforesaid patent by the United States, through its duly authorized department, was a final and conclusive adjudication by a legally constituted tribunal, charged by law with the duty of determining all the facts legally prerequisite to the issuance of said patent, and said adjudication was final and conclusive, and is not open to said attack, as is set forth by intervenor herein, or at the time hereof.

(7) This defendant further alleges that the sales and transfers of the land in question above set forth, were made in good faith, and for a valuable consideration, and vested a complete, legal and indefeasible title in the vendee of the New Orleans Pacific Railway Company, and in the various vendees, predecessors in title of this defendant, and alleges



that on the execution and passing of the said acts of conveyance respectively, that during the time of ownership of each of the predecessors in title of this defendant, each thereof held, owned, and possessed the said lands peaceably as the sole, legal, and bona fide owners thereof; and this

43 defendant alleges that it is a bona fide purchaser of the lands in question, having paid therefor the full, reasonable cash value of said land at the date of its purchase, and alleges that even if it should be proven that any error or irregularity was made in the issuance of the patent by the Government to the New Orleans Pacific Railway Company, yet such error or irregularity cannot be imputed to this defendant, defendant being a bona fide purchaser for value without notice of such error or irregularity and in actual ignorance thereof.

#### XIV.

Defendant adopts and makes part of this answer to the intervention all and singular the pleas and answer hereinbefore filed to the original bill.

WHEREFORE DEFENDANT PRAYS: That intervenor's demand be rejected at her costs, and that the defendant, the W. R. Pickering Lumber Company, be quieted in its ownership and possession of the said land, viz: The Southwest quarter (SW $\frac{1}{4}$ ) of Northeast quarter (NE $\frac{1}{4}$ ), Section Thirteen (13), Township Two (2) North, Range Seven (7) West, and North half (N $\frac{1}{2}$ ) of Northeast quarter (NE $\frac{1}{4}$ ), Section Thirteen (13), Township Two (2) North, Range Seven (7) West, Vernon Parish, Louisiana; and that its title thereto be confirmed according to law, and particularly under the Act of Congress of March 2, 1896.

And defendant adopts the prayer of the answer to the original bill, and prays for such other and further relief in the premises, as to this Honorable Court may seem meet and in accordance with equity.

BLANCHARD, SMITH & PALMER  
J. G. PALMER  
W. W. THOMPSON.

Solicitors for Defendant,  
W. R. Pickering Lumber Company.

ENDORSED: No. 961 In Equity. United States District Court for the Western District of Louisiana. United States of America, Plaintiff vs New Orleans Pacific Railway Company, and W. R. Pickering Lumber Company, and River Land and Lumber Company, Defendants. INTERVENTION OF MRS. JOSEPHINE BROWN MOTION TO DISMISS AND ANSWER TO INTERVENTION ON PART OF DEFENDANT, W. R. PICKERING LUMBER CO. Filed Apr, 20, 1915, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

44 In the District Court of the United States  
for the Western District of Louisiana.

No. 961 In Equity.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY

and

W. R. PICKERING LUMBER COMPANY

and

RIVER LAND AND LUMBER COMPANY,

Defendants.

And now comes the River Land & Lumber Company, one of the defendants herein, and appearing separately moves the Court to dismiss and reject the intervention filed here in by Mrs. Josephene Brown, widow of the late Jasper J. Brown, because an Act of Congress, approved March 3, 1891, provides that all suits by the United States to vacate and annul any patent issued prior to its passage should be brought within five years from the passage thereof, and an Act of Congress, approved March 2, 1896, provides that all suits by the United States to vacate and annul any patent theretofore issued under any railroad or wagon road land grant should be brought within five years from the date of the passage of the said act.

And your respondent shows that, as by the original bill and the said intervention appears, the patent herein sought to be annulled, was issued prior to both of said acts of Congress of the United States, that is to say, on August 8, 1889, and this being a suit to vacate and annul the said patent, the original bill was filed in your Honorable Court on the 21st day of January, 1915, and this intervention subsequent thereto; and that hence under both the said Acts of Congress, the time within which the Government should have brought this suit to vacate and annul the patent issued to the New Orleans Pacific Railway Company, and the time within which this intervention could be brought, either as an intervention or as a direct action, expired long prior to the filing of this bill, or of this intervention in your Honorable Court, and to the issue of the subpoena herein.

Defendant further pleads against the right and propriety of the United States to prosecute its said bill, or of the intervenor to prosecute the said intervention, the doctrine of equitable laches, and of estoppel, and shows that the period of twenty-six years has elapsed since the issuance of the said patent, during which time no attack has been made thereon, and in faith thereof the title to the land covered thereby has been transferred, and has passed by mesne conveyances into the hands of remote bona fide purchasers.

And this defendant therefore tenders this, its motion in limine, based on prescription and limitation above set forth, and the equitable laches and estoppel above pleaded, and prays that same may be separately heard and disposed of before the trial of the case, and that upon the said hearing it be sustained, and the bill and intervention dismissed and rejected at the costs of the complainant and intervenor.

And now, reserving the benefit of the above and foregoing pleas of prescription, limitation, laches and estoppel, and only in case same should be over-ruled, this defendant answers the allegations of the intervention as follows:—

# I.

Defendant admits the allegations of Sec. 1, of the intervention.

## 2.

45 Defendant denies the general statements of law contained in Section 2 of the intervention, and denies that intervenor is entitled to claim any right or benefit by virtue of the same.

## 3.

Defendant admits the general statements of law contained in Section 3 of the intervention, but denies that intervenor is entitled to claim any right or benefit by virtue of the same.

## 4.

Defendant admits the allegations of Section 4 of the intervention as matters of fact, but specifically denies that this defendant, River Land & Lumber Company, is, or can be, bound or precluded in any way by the said agreement of August 3, 1892, or any of its provisions or clauses, because the New Orleans Pacific Railway Company had prior to that date sold the said land to this defendant's author in title, Horace C. Brewster, as is fully shown in the answer to the original bill filed by defendant herein.

## 5.

Defendant admits the allegations of Section 5 of the intervention, except that defendant denies that the land in question was occupied by and in possession of Jasper J. Brown, or that the said Jasper J. Brown was an actual settler, qualified to enter public land of the United States under the homestead laws, or that he was then and there claiming the said land under the homestead laws, and denies the action of the Land Department of the United States in including the said land in the patent which issued to the said Railway Company was erroneous or without authority in law, and shows that the United States Government was completely and irrevocably divested of title by the Act of Congress of March 3, 1871, and by the issuance of patent on August 8, 1839, and avers that the Public Land Office was open and in existence at Natchitoches, Louisiana, in whose district and under whose jurisdiction the said land was situated; that the said land was surveyed and lines established,

and that the said Jasper J. Brown, if he had been entitled or had desired to do so, could and should have filed his homestead application within the delays prescribed by law; and defendant denies that the provisions of the second section of the Act of Congress of February 8, 1887, apply to lands at this time patented, which land passed under the terms of the Act of March 3, 1871, as above alleged; and because it would divest vested rights and impair obligations of a contract, and therefore violate Article One of Section Ten, and the Fifth Amendment of the Constitution of the United States.

## 6.

Defendant denies all and singular the allegations of Section Six of the intervention, especially in so far as they in any way affect the North East Quarter (N E  $\frac{1}{4}$ ) of the North West (N W  $\frac{1}{4}$ ) Quarter, of said Section Thirteen (13), being the land embraced in this suit.

## 7.

Defendant denies, all and singular, the allegations of Section 7 of the intervention.

## 8.

Defendant denies, all and singular, the allegations of Section 8 of the intervention.

## 9.

Defendant denies, all and singular, the allegations of Section 9 of the intervention, and again avers that any acceptance made by the New Orleans Pacific Railway Company, or any agreement to recover and re-convey to the United States or to actual settlers, made after the date on which the New Orleans Pacific Railway Company sold the said land to Horace C. Brewster, June 13, 1890, could or did in any way bind or preclude the said Horace C. Brewster, or any of his successors in title.

## 10.

Defendant admits so much of Section 10 of the intervention as avers that the land in question in this suit is now

claimed by the River Land & Lumber Company under mesne conveyances from the said New Orleans Pacific Railway Company, but specifically denies all and singular the remaining allegations of the said section.

And in this connection, this defendant avers that under the mesne conveyances, it has a good, valid, and perfect title to the said land, and has been in possession thereof, has ranged and paid taxes on same from the year 1890 to date inclusive.

## 11.

Defendant is not sufficiently informed as to the allegations of Paragraph eleven of the intervention to enable it to answer, and therefore denies same.

## 12.

Defendant avers that it has owned and possessed the land in good faith under deeds translativ of property, duly recorded in the Conveyance Books of Vernon Parish, Louisiana, by virtue of the following chain of title, viz:—

1. United States of America to the New Orleans Pacific Railway Company, patent dated August 8, 1889, filed June 30, 1890, recorded Book "F", p. 107.

2. New Orleans Pacific Railway Company by E. B. Wheelock, President and John F. Dillon and H. M. Alexander, Trustees of the Land Grant Mortgage, to Horace C. Brewster, dated June 13, 1890, filed June 30, 1890, recorded Book "F", pp. 107-109.

3. Horace C. Brewster, individually and as trustee, to Charles L. Pack, April 10, 1900, filed April 20, 1900, recorded Book "P", pp. 151-152.

4. Charles L. Pack to George R. Nicholson, November 24, 1903, filed February 26, 1904, recorded Book 3, p. 509.

5. George R. Nicholson to Charles L. Pack, August 8, 1905, filed January 7, 1907, recorded Book 11, p. 321.

6. Charles L. Pack to Edward B. Greene, July 27, 1909, filed July 5, 1910, recorded Book 23, p. 47.

7. Edward B. Greene to River Land & Lumber Com-

pany, July 27, 1909 and December 2, 1909, filed July 15, 1910, recorded Book 23, p. 64.

Defendant refers to and adopts the patent to the New Orleans Pacific Railway Company, and a certified copy of each of the deeds named and described in the chain of title above set forth attached to and incorporated into the answer to the original bill.

## 13.

Further answering, defendant denies that intervenor is entitled to any relief by virtue of the Act of Congress of February 8, 1887, because:—

(1) The lands here in question were and are not, have never been and cannot be held, deemed, or considered, to be subject to, or in any manner affected by the said Act of February 8, 1887, or by any of the terms, provisions, or conditions thereof.

(2) The said land was not possessed as alleged by actual settlers nor the heirs or assigns of actual settlers under the terms of the said proviso.

(3) The property involved in this suit was selected by the New Orleans Pacific Railway Company as indemnity land under the terms of the Act of Congress, March 3, 1871, whereas the proviso of Section Two of the Act of February 8, 1887, applies only to granted or placed land and not to lieu or indemnity lands.

47 (4) Defendant further represents that the New Orleans Pacific Railway Company complied with all the acts of Congress under which the said lands were obtained, and that the said patent vested in said New Orleans Pacific Railway Company and in its transferees and assigns absolute and indefeasible title to the said land, as shown by the recitals of the said patents, the said lands having been duly selected from the indemnity limits of the said grant and the said selection having been duly approved.

(5) Defendant further shows that the said sales and said transfers above set forth were made in good faith for



a valuable consideration without notice of any defect in the title and vested complete legal and indefeasible title in the said vendees on the execution and passing of the said Acts of Conveyance respectfully, and that said vendors were each seized in fee thereof; and that during the said ownership as above set forth, each held, owned, and possessed the lands peaceably as the sole, legal, and bona fide owners thereof; that the consideration expressed in said deeds attached hereto and made a part hereof were bona fide and truly paid, and that the vendees in said deeds were without notice of any outstanding claims to said land or defects in said title previous to and down to the time of paying said consideration and the delivery of said deeds; and defendant denies that it or its authors in title had any notice of any settlement, occupancy of, or that any homestead, pre-emption, or other claims had attached to the land. And further shows that the title to the said lands under the patent issued to the New Orleans Pacific Railway Company has been confirmed. by the Acts of Congress of March 3, 1887, March 3, 1891, and of March 2, 1896, the latter of which provides in the first section thereof, that suits to annul any patents to lands heretofore erroneously issued to any patents thereafter issued within six years from the date of the issuance of said patent, and the said Section further provides:

"But no patent to any lands held by bona fide purchasers shall be vacated and annulled, but the right and title of such purchaser is hereby confirmed."

Which said Acts of Congress, and the several provisions thereof, and especially the portion of the Act of March 2, 1896, just above quoted, are pleaded as muniments of title of defendant, specially confirming, if any confirmation is necessary, the title to the land described by intervenor, as bona fide purchasers of same by virtue of the chain of title as above set forth.

And defendant further pleads the provisions of the said Acts of Congress, March 3, 1887, March 3, 1891, and March 2, 1896, in bar of this suit, and shows that any right which intervenor may have had at any time to institute this suit, has long since prescribed.

(4) The awarding and issuance of the aforesaid patent by the United States, through its duly authorized department, was a final and conclusive adjudication by a legally constituted tribunal, charged by law with the duty of determining all the facts legally prerequisite to the issuance of said patent, and said adjudication was final and conclusive, and is not open to said attack, as is set forth by intervenor herein, or at the time hereof.

(5) This defendant further alleges that the sale and transfers of the land in question above set forth, were made in good faith, and for a valuable consideration, and vested a complete, legal and indefeasible title in the vendee of the New Orleans Pacific Railway Company, and in the various vendees, predecessors in title of this defendant, and alleges that on the execution and passing of the said acts of conveyance respectively, that during the time of ownership of each of the predecessors in title of this defendant, each thereof held, owned, and possessed the said lands peaceably as the sole, legal, and bona fide owners thereof; and

48 this defendant alleges that it is a bona fide purchaser of the lands in question, having paid therefor the full, reasonable cash value of said land at the date of its purchase, and alleges that even if it should be proven that any error or irregularity was made in the issuance of the patent by the Government to the New Orleans Pacific Railway Company, yet such error or irregularity cannot be imputed to this defendant, defendant being a bona fide purchaser for value without notice of such error or irregularity and in actual ignorance thereof.

#### 14.

Defendant adopts and makes part of this answer to the intervention all and singular the pleas and answer hereinbefore filed to the original bill.

WHEREFORE DEFENDANT PRAYS: That intervenor's demand be rejected at her costs, and that the defendant, the River Land & Lumber Company, be quieted in its ownership and possession of the said land, viz: The North East Quarter (N E ¼) of North West Quarter (N

W 1/4) of Section Thirteen (13) Township Two (2) North, Range Seven (7) West, Vernon Parish, Louisiana; and that its title thereto be confirmed according to law, and particularly under the Act of Congress of March 2, 1896.

And defendant adopts the prayer of the answer to the original bill, and prays for such other and further relief in the premises, as to this Honorable Court may seem meet and in accordance with equity.

H. H. WHITE

R. F. WHITE

WHITE & THORNTON & HOLLOMAN

Solicitors for Defendant,

River Land & Lumber Company.

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ENDORSED: #961 Equity. U. S. D. C. West. Dist. La.  
U. S. vs N. O. P. Ry. Co., Pickering Lbr. Co. & River  
Land & Lumber Co. ANSWER TO INTERVENTION  
OF Mrs. Josephene Brown on part of River Land &  
Lumber Co. Filed Apr. 2, 1915, Leroy B. Gulotta,  
Clerk, U. S. District Court, West Dist. of Louisiana.

49 In the District Court of the United States  
For the Western District of Louisiana.

No. 961 In Equity.

UNITED STATES OF AMERICA,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY,  
W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND & LUMBER COMPANY.

The following admissions of fact are made: subject to,  
without waiving, and with full reservation of all the pleas

of prescription, laches, estoppel, right of action, cause of action, want of authority, and whatever other pleas, exceptions and defences appear in this record, and supplementing the allegations in the bill and admissions in the answers.

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#### ADMISSION NO. 1.

It is admitted that the two patents issued as alleged in the bill, dated, respectively, March 3, 1885 as to the southwest quarter of the northeast quarter, and on August 8, 1889 as to the other 3 forties described in the bill. And it is admitted that these two patents are in words and figures the same as the patent which was filed by the Government in suit number 884 entitled United States versus New Orleans Pacific Railway Company and River Land & Lumber Company, Mrs. M. Caroline Hughes, Intervenor, except as to the description of the land and the dates, and which by reference, is made a part hereof.

50

#### ADMISSION NO. 2.

It is admitted that the date of the transfer from the New Orleans, Baton Rouge & Vicksburg Railroad Company to the New Orleans Pacific Railway Company of the grant in question was January 5, 1881.

#### ADMISSION NO. 3.

It is admitted that on November 17, 1882, the New Orleans Pacific Railway Company filed maps in the General Land Office showing the location of its line of road opposite the land in question in this suit which map the Act of February 8, 1887, provides shall "indicate the definite location of said road."

#### ADMISSION NO. 4.

It is admitted that prior to the passage of the Act of February 8, 1887, there was considerable agitation relative

to the grant, and opposition thereto, as a result of which the said Act was passed, and subsequently, in 1892, the General Land Office was holding up, because of settlers' claims under said Act of February 8, 1887, many selection lists and patents of the New Orleans Pacific Railway Company, and in order to secure, and facilitate the early approval and issuance of the same, the agreement of date August 3, 1892, was entered into.

#### ADMISSION NO. 5.

It is admitted that since the sale of said land by the New Orleans Pacific Railway Company the said lands have been cruised by, and assessed to, and the taxes thereon paid by, the record owners. But this admission shall not be construed as an admission that Jasper J. Brown and Mrs. Josephine Brown did not pay taxes on the improvements thereon.

#### ADMISSION NO. 6.

It is admitted that the lands herein litigated were within the limits and jurisdiction of the United States District Land Office located at Natchitoches, Louisiana, which land office was existing and open from, and prior to, 51 1871, and has continued to exist until transferred to New Orleans, and subsequently to Baton Rouge, Louisiana, within the last few years, and at said points of transfer continued in existence and open for business.

#### ADMISSION NO. 7.

It is also admitted that the lands were surveyed and the lines established by an official survey of the United States Government, and open for settlement and entry as a part of the public domain of the United States prior to 1871.

#### ADMISSION NO. 8.

It is admitted that the New Orleans Pacific Railway Company has parted with title to various individuals and purchasers of all the lands it obtained under its grant, except about 1000 acres. But the tract herein sued for is not

included in said 1000 acres, but was transferred and sold by the New Orleans Pacific Railway Company: with respect to the northeast quarter of the northwest quarter, on June 13, 1890, and as to the other 3 forties (north half of the northeast quarter and southwest quarter of the northeast quarter) on June 28, 1900.

#### ADMISSION NO. 9.

It is admitted that on November 11, 1871, and February 13, 1873, the New Orleans, Baton Rouge & Vicksburg Railroad Company filed in the General Land Office maps designating the general route of the railroad from Shreveport, by way of Alexandria, to Baton Rouge, and that thereupon the withdrawal provided in the said Act of the public lands along said route was made by the Secretary of the Interior, to take effect in April of 1873.

#### ADMISSION NO. 10.

It is agreed that the House Report (no.2698, 49th Congress, First Session) and the Senate Report (No. 711, 47 Congress, First Session) be filed by reference and copied from printed report of the hearings before the Committee on Public lands in the House of Representatives on H. R. 5890, of date January 26 and 27, 1914, pages 118 and 135, for the purpose of showing the general history of the grant.

52 ,

#### ADMISSION NO. 11.

It is admitted that the property involved in this suit was selected by the New Orleans Pacific Railway Company as indemnity lands under the terms of the Act of Congress of March 3, 1871.

#### ADMISSION NO. 12.

It is admitted that the map made by Elzie Stokes and James W. Neal herein filed as Government's Exhibit A shows the location of the dwelling-house, old field, branch, and timber lands as they now exist.

## ADMISSION NO. 13.

It is admitted:

(a) That on December 29, 1883, the New Orleans Pacific Railway Company selected all of Section 13, in Township 2 North, of Range 7 West, as indemnity lands.

(b) That the selection of the Southwest quarter of the northeast quarter, said Section, was approved by the General Land Office on March 3, 1885, and patent issued on the same date.

(c) That the northeast quarter of the northwest quarter and north half of the northeast quarter, said Section, was approved by the General Land Office July 14, 1888, and patented August 8, 1889.

(d) That Jasper J. Brown made his homestead application August 10, 1888.

## ADMISSION NO. 14.

It is admitted that the defendants in this suit, to-wit: W. R. Pickering Lumber Company and River Land & Lumber Company, have chains of title to the respective parcels of land claimed by said companies as set forth in their respective answers to the bill in this case, paragraph No. 11 of each answer. And that the said deeds are duly recorded in the Conveyance Books of Vernon Parish as of dates and pages alleged. The production of the originals or certified copies of said deeds is waived and dispensed with.

53

## ADMISSION NO. 15.

It is agreed:

(a) That the depositions of Mr. Charles L. Pack, George R. Nicholson and Edward B. Greene, with reference to good faith, which were taken in suit No. 884, United States versus New Orleans Pacific Railway Company and River Land & Lumber Company, Mrs. M. Caroline Hughes, Intervenor, can be used in this case on behalf of the River Land & Lumber Company, its chain of title being the same in both cases.



(b) That at the time the defendant W. R. Pickering Lumber Company acquired this property as per chain of title set up in paragraph Number 11 of its answer to the bill it had the title thereto examined by its attorneys at the time, who reported the title to be good, and upon faith of which the W. R. Pickering Lumber Company made said purchase.

(c) That at the time the W. R. Pickering Lumber Company purchased said property the prices paid therefor were reasonable and just prices in that vicinity at that time for the lands and timber involved.

GEO. WHITFIELD JACK  
United States Attorney

ROBERT A. HUNTER,  
Assistant United States Attorney  
Counsel for Government.

HUDSON, POTTS, BERNSTEIN & SHOLARS  
Attorneys for N. O. P. Ry. Co.

WHITE & THORNTON & HOLLOMAN,  
Attorneys for River Land & Lbr. Co.

BLANCHARD, SMITH & PALMER  
Attorney for W. R. Pickering Lbr. Co.  
Counsel for Defendants.

S. M. ATKINSON,  
Attorney for Mrs. Josephine Brown  
Counsel for Intervenor.

ENDORSED: No. 961. United States District Court,  
Western District of Louisiana. United States vs. New  
Orleans Pacific Railway Co. W. R. Pickering Lumber  
Company and River Land & Lumber Company. AD-  
MISSIONS OF FACT agreed to by counsel for Gov-  
ernment, counsel for defendants and counsel for Inter-  
venor, Mrs. Josephine Brown. Filed \_\_\_\_\_,  
Leroy B. Gulotta, Clerk U. S. District Court, West Dist.  
of Louisiana.

54 In the District Court of the United States for the  
Western District of Louisiana

No. 961 In Equity.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY  
RIVER LAND & LUMBER COMPANY

and

W. R. PICKERING LUMBER COMPANY.

The following supplemental admission of fact is made: subject to, without waiving, and with full reservation of all the pleas of prescription, laches, estoppel, right of action, cause of action want of authority, and whatever other pleas, exceptions and defences as appear in this record, and supplementing the allegations in the bill and admissions in the answers, and the agreement of facts previously entered into.

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It is admitted that the sales from the New Orleans Pacific Railway Company to Horace C. Brewster and the Kistatchie Land Company referred to in defendants' answers were made without warranty of title except as against the acts of the said New Orleans Pacific Railway Company.

Thus done and signed this 1 day of June, 1915.

GEO. WHITFIELD JACK

United States Attorney

ROBERT A. HUNTER

Assistant United States Attorney

COUNSEL FOR GOVERNMENT

HUDSON, POTTS, BERNSTEIN & SHOLARS

Counsel for N. O. P. Ry. Company

WHITE & THORNTON & HOLLOMAN,

Counsel for River Land & Lumber Co

BLANCHARD, SMITH & PALMER

Counsel for W. R. Pickering Lbr. Co

COUNSEL FOR DEFENDANTS.

55      ENDORSED: No. 961. United States District Court, Western District of Louisiana. United States vs New Orleans Pacific Ry. Company, River Land & Lumber Company and W. R. Pickering Lumber Company. SUPPLEMENTAL ADMISSIONS OF FACT. Filed \_\_\_\_\_ Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

56      In the District Court of the United States for the Western District of Louisiana.

No. 961 In Equity.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS-PACIFIC RAILWAY COMPANY,  
W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND AND LUMBER COMPANY.  
SUPPLEMENTAL ADMISSIONS.

ADMISSION No. 16. It is admitted that the tax rolls show that J. J. Brown and Mrs. Josephine Brown, wife of J. J. Brown, paid the taxes on certain improvements situated on lands described in the assessment rolls of Vernon Parish, Louisiana, as Public Lands or Railroad Lands for the years 1883 up to and including the year 1907, and that the tax rolls for the years 1881 and 1882 cannot be found. The tax rolls show that the improvements were assessed separately from the land, and it is admitted that J. J. Brown and Mrs. Josephine Brown had no improvements on Public or Railroad lands other than the land in question.

ADMISSION No. 17. The New Orleans, Baton Rouge and Vicksburg Railroad Company designated the general route of its road as near as might be, and filed a copy of the same in the Department of the Interior on November 11, 1871, which designation and map were accepted by the Secretary of the Interior. On November 29, 1871, the Sec-

retary of the Interior made an order of withdrawal of both place and indemnity lands and transmitted said order to the local land offices in the State of Louisiana affected thereby. Said Order of withdrawal was filed in the New Orleans Land Office December 11, 1871, and in the Natchitoches Land Office December 20, 1871; copies of the letters instructing said withdrawals, being dated November 29, 1871, are attached to the admissions in the suit of the United States vs. New Orleans-Pacific Railway Company, W. R. Pickering Lumber Company and Southland Lumber Company, No. 947 on the Equity docket of this court, and filed and made a part of the record in this case.

57           The indemnity withdrawal for this railroad was revoked by order of the Secretary of the Interior dated August 15, 1887. (This admission to supersede and take the place of Admission No. 9.)

ADMISSION No. 18. It is admitted that the lands in controversy are worth in excess of Twelve Hundred Dollars (\$1200.00).

ADMISSION No. 19. It is admitted that there has been no voluntary non-suit or final decree in Equity suit No. 16 on the docket of this Court, a portion of the record of which was offered in evidence in so far as the land involved in this suit is concerned.

GEO. WHITFIELD JACK,  
United States Attorney.

F. G. HUDSON, JR.,  
Solicitor for Defendant New Orleans-  
Pacific Railway Company.

JAS. G. PALMER,  
Solicitor for Defendant W. R. Pickering  
Lumber Company.

H. H. WHITE,  
Solicitor for Defendant River Land  
and Lumber Company.

S. M. ATKINSON,  
Solicitor for Intervenor,  
Mrs. Josephine Brown.

ENDORSED: No. 961 in Equity. United States District Court, Western District of Louisiana. United States vs New Orleans Pacific Railway Co., W. R. Pickering Lumber Company, and River Land and Lumber Company. SUPPLEMENTAL ADMISSIONS OF FACT made by and between attorneys for plaintiff, defendants and intervenors.

58

PATENT.

4-207

Exhibit "A"

B.

M.E.L. DEPARTMENT OF THE INTERIOR.

General Land Office,

Washington, D. C., May 20, 1914.

I hereby certify that the annexed copy of Patent No. 4, is a true and literal exemplifications from the record of patents in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and (SEAL) year above written.

C. M. BRUCE,

Assistant Commissioner of the  
General Land Office.

Filed in evidence Mar. 2, 1915. Leroy B. Gulotta,  
Clerk U. S. District Court, West Dist. of Louisiana.

59

\*1 THE UNITED STATES OF AMERICA

No. 4.

424015-33

TO ALL TO WHOM THESE PRESENTS SHALL COME,  
GREETING:

WHEREAS, by the Act of Congress approved March 3, 1871, entitled "An Act to incorporate the Texas Pacific

Railroad Company, and to aid in the construction of its road, and for other purposes," there was granted to said Texas Pacific Railroad Company, for the purpose of aiding in the construction of its railroad and telegraph line, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as such line may be adopted by said company, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad in California, where the same shall not have been sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed.

AND WHEREAS, it was further provided that "In case any of said lands shall have been sold, reserved, occupied or preempted, or otherwise disposed of, other lands shall be selected in lieu thereof by said company, under the direction of the Secretary of the Interior, in alternate sections and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, first above named, and not including the reserved numbers:

AND WHEREAS, by section twenty-two of said Act, there was granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, chartered by the State of Louisiana, its successors and assigns, in aid of the construction of a railroad from New Orleans to Baton Rouge, thence by the way of Alexandria, in said State, to connect with said Texas Pacific Railroad at its eastern terminus, the same number of alternate sections of public land per mile in the State of Louisiana, as were by said Act granted in the State of California, to said Texas Pacific Railroad Company, to be selected upon the same terms and in the same manner as was provided for and required from said Texas Pacific Railroad Company within said State of California:

AND WHEREAS, said New Orleans, Baton Rouge and Vicksburg Railroad Company did on the fifth day of January, one thousand, eight hundred and eighty-one, assign and convey all its right, title and interest in or to the grant of lands aforesaid, to the New Orleans Pacific Railway Company, chartered by the State of Louisiana, as shown by the original deed of assignment filed in the General Land Office February 25, 1881.

AND WHEREAS, on March 19, 1883, the Secretary of the Interior transmitted to the General Land Office an official statement showing that the New Orleans Pacific Railway Company had constructed and equipped, in the manner required by said Act of March 3, 1871, a railroad from White Castle, in the State of Louisiana, to a connection with the Texas and Pacific Railway in the City of Shreveport, in said State, a distance of two hundred and sixty miles, and that pursuant to the report of the Commissioner appointed under the provisions of Section Eighteen of said Act, said railroad had been accepted by the President in conformity with said Act.

AND WHEREAS, certain tracts of lands in the State of Louisiana have been selected under the Act aforesaid by Felix Reynaud, the duly authorized land agent of the New Orleans Pacific Railway Company, as shown by his original list of selections in the Natchitoches District, dated December 29, 1883, and certified by the register and receiver of the land office in said district on the same date. The said tracts of land lie coterminous with the constructed line of road and are particularly described as follows, to-wit:

NORTH OF BASE LINE AND WEST OF LOUISIANA PRINCIPAL MERIDIAN LOUISIANA

NATCHITOCHES DISTRICT THIRTY MILE LIMIT.  
TOWNSHIP TWO. RANGE SEVEN.

The South half of the North East Quarter, the North West Quarter of the Northwest Quarter, the South Half of the North West Quarter and the South Half of Section



Thirteen, containing five hundred and thirty-one acres and sixty-seven hundredths of an acre.

And other lands.

61

424015-67.

NOW, KNOW YE, That the United States of America, in consideration of the premises and pursuant to the said act of Congress, have given and granted, and by these presents, DO GIVE AND GRANT unto the said New Orleans Pacific Railway Company, successors and assigns, as aforesaid, and to its successors, the tracts of land described in the foregoing, excluding and excepting, however, all "mineral" lands, should any such be found in the tracts aforesaid; but this exclusion and exception, according to the terms of the "Statute" shall not be held to include iron or coal."

TO HAVE AND TO HOLD the same, with the appurtenances, unto the said New Orleans Pacific Railway Company, and to its successors and assigns forever.

IN TESTIMONY WHEREOF, I, Chester A. Arthur, President of the United States, have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, this third day of March, in the year of our Lord, one thousand eight hundred and eighty-five, and of the Independence of the United States the one hundred and ninth.

By the President: CHESTER A. ARTHUR.  
(SEAL)

By M. McKEAN,  
Secretary.

Cost of conveying paid March 3 '85 by Hon. Wm. H. Barnum, See Money Letter 32363.

S. W. CLARK  
Recorder of the General Land Office.

Patent trans. with letter of March 3, 1885, to Hon. Wm. H. Barnum, Washington, D. C.

Receipt ack'd by Judge Jno. F. Dillon, March 3, '85.—  
(22730.)

62

4-207

B.

MEL.

## DEPARTMENT OF THE INTERIOR,

General Land Office,

Washington, D. C.

May 20, 1914.

I hereby certify that the annexed copy of patent No. 6 true and literal exemplifications from the record of patents in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(SEAL)

C. M. BRUCE

Assistant Commissioner of the General Land Office.

No. 884 In Eq. Filed in evidence Mar. 2, 1915, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

63

92

## THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME;  
GREETING

Compared J. M. W. M. B. H. Patent No. 6. 424015-69

Whereas, by the Act of Congress approved March 3, 1871, entitled "An Act to incorporate the Texas & Pacific Railroad Company, and to aid in the construction of its road, and for other purposes," there was granted to the said Texas Pacific Railroad Company, for the purpose of aiding in the construction of its railroad and Telegraph line, every alternate section of public land not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as such

line may be adopted by said Company, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad in California, where the same shall not have been sold, reserved, or otherwise disposed of by the United States, and to which a preemption or homestead claim may not have attached at the time the line of said road is definitely fixed.

And whereas, it was further provided that in case any of said lands shall have been sold, reserved, occupied or preempted or otherwise disposed of, other lands shall be selected in lieu thereof by said Company, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections first above named, and not including the reserved numbers.

And whereas, by section twenty-two of said Act, there was granted to the New Orleans Baton Rouge, and Vicksburg Railroad Company, chartered by the State of Louisiana, its successors and assigns, in aid of the construction of a railroad from New Orleans to Baton Rouge, thence by the way of Alexandria, in said State, to connect with said Texas Pacific Railroad at its eastern terminus, the same number of alternate sections of public lands per mile, in the State of Louisiana as were by said Act granted in the State of California to said Texas Pacific Railroad Company, to be selected upon the same terms and in the same manner as was provided for and required from said Texas Pacific Railroad Company within said State of California.

64

424015-70

And whereas, said New Orleans, Baton Rouge and Vicksburg Railroad Company did on the fifth day of January, one thousand eight hundred and eighty one, assign and convey all its right, title and interest in or to the grant of lands aforesaid, to the New Orleans Pacific Railway Company, chartered by the State of Louisiana, as shown by the original deed of assignment filed in the General Land Office February 25, 1881:

And Whereas, on March 19, 1883, the Secretary of the

Interior transmitted to the General Land Office an official statement showing that the New Orleans Pacific Railway Company had constructed and equipped in the manner required by said Act of March 3, 1871, a railroad from White Castle, in the State of Louisiana, to a connection with the Texas and Pacific Railway in the City of Shreveport, in said State, a distance of two hundred and sixty miles, and that pursuant to the report of the Commissioner appointed under the provisions of Section eighteen of said Act, said railroad had been accepted by the President in conformity with said Act:

And Whereas, by Act of Congress approved February 8, 1887, entitled "An Act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands and for other purposes, relinquished and confirmed the title of the United States and of the original grantee, to the lands granted by Act of March 3, 1871, aforesaid, and not therein declared forfeited, to the New Orleans Pacific Railroad Company, as assignee of the New Orleans Baton Rouge and Vicksburg Railroad Company:

And Whereas, certain tracts of land in the State of Louisiana, have been selected under the Acts aforesaid by Felix Raymond and L. Dupliex, the duly authorized land agents of said New Orleans Pacific Railway Company as shown by their original lists of selections bearing dates December 29, 1883, and July 30, 1887, and certified the same dates by the Registers and Receivers at Natchitoches and New Orleans, Louisiana.

The said tracts of land line coterminous with the constructed line of road and are particularly described as follows to-wit:

65

424015-71

North of base line and West of Louisiana Meridian.  
Natchitoches District.

Township Two Range Seven

The North half of the North East quarter, and the North East quarter of the North West quarter of Section

thirteen, containing one hundred and twenty-two acres, and seventy-eight hundredths of an acre.

And other lands.

NOW KNOW YE, That the United States of America, in consideration of the premises and pursuant to the said Act of Congress, have given and granted and by these presents do give and grant unto the said New Orleans Pacific Railway Company, successor and assignee as aforesaid and to its successors the tracts of land described in the foregoing, excluding and excepting however all Mineral lands should any such be found in the tracts aforesaid; but this exclusion and exception according to the terms of the Statute shall not be held to include iron or coal."

TO HAVE AND TO HOLD the same with the appurtenances unto the said New Orleans Pacific Railway Company and to its successors and assigns forever.

IN TESTIMONY WHEREOF, I, Benjamin Harrison, President of the United States of America, have caused these letters to be made patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington this eighth day of August, in the year of our Lord one thousand eight hundred and eighty nine, and of the Independence of the United States the one hundred and fourteenth.

By the President: BENJAMIN HARRISON  
(SEAL) ELLEN MACFARLAND,  
Asst. Secretary.

D. Taylor, Recorder of the General Land Office ad interim. Patent No. 6, trans. to Col. E. B. Wheelock, Prest. of Co. Aug. 15, 1889, Washington, D. C.

Cost of conveying paid Aug. 26, 1889, See C. D. No. 60 Asst. Treasurer, U. S. Letter No 102711, filed with papers of Co.

66 HOUSE REPORT NO. 2698, FORTY-NINTH  
CONGRESS, FIRST SESSION.)

New Orleans, Baton Rouge and Vicksburg Railroad  
Company.

June 1, 1886.—Referred to the House Calendar and ordered to be printed.

Mr. Laffoon, from the Committee on the Public Lands, submitted the following report (to accompany bill H. R. 3186):

The Committee on the Public Lands, to whom was referred the bill (H. R. 3186) entitled "A bill to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes," having had the same under consideration, make the following report:

The New Orleans, Baton Rouge and Vicksburg Railroad Company was chartered by an act of the Legislature of Louisiana dated December 30, 1869. By said act it was clothed with authority to construct and operate a railroad from any point on the line of the New Orleans, Jackson and Great Northern Railroad within the Parish of Livingston, running thence to any point on the line dividing the States of Louisiana and Mississippi. The line thus indicated by its charter was and is east of the Mississippi River, as far as Baton Rouge. It was also authorized by the terms of its charter to construct and operate a branch railroad from its main line, as above described, to the City of Baton Rouge; and for the purpose of connecting its railroad with the railroads of other companies, &c., it was furthermore authorized "to construct, maintain, and use by running thereon its engines and cars, such branch railroad and tracks as it may find necessary to own and use," and such branch railroads were to be considered as a part of its main track in the State of Louisiana.

The New Orleans, Baton Rouge and Vicksburg company was only supported by private capital to aid in its

completion until the act of Congress, dated March 3, 1871, known as "the Texas Pacific grant", was enacted, among other things, for the purpose of aiding in its construction. The twenty-second section of said act reads as follows:

"That the New Orleans, Baton Rouge and Vicksburg Railroad Company, chartered by the State of Louisiana, shall have the right to connect by the utmost eligible route, to be selected by said company, with the said Texas & Pacific Railroad at its eastern terminus, and shall have the right of way through the public land to the same extent granted hereby to the said Texas Pacific Railroad Company; and in aid of its construction from New Orleans to Baton Rouge, thence by way of Alexandria, in said State, to connect with said Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors and assigns, the same number of alternate sections of public land per mile in the State of Louisiana as are by this act granted in the State of California to said Texas Pacific Railroad Company; and said lands shall be withdrawn from market, selected, and patents issued therefor, and open for settlement and preemption upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company within said State of California: PROVIDED, That said company shall complete the whole of said road within five years from the passage of this act."

On November 11, 1871, this Company filed in the General Land Office a map designating the general route of a road projected by it from Shreveport, by way of Alexandria, to Baton Rouge, and thereupon a withdrawal of the public lands along said route was made to take effect in April, 1873.

On February 1s, 1873, a second map was filed in the General Land Office by the same company, designating the general route of a road projected by it from New Orleans to Baton Rouge, and a withdrawal of the public lands along said route was ordered, which took effect in April, 1873.

67

The five years in which this road was to be completed expired on March 3, 1876, and dur-



ing all this period nothing has been done by this company to earn this grant. Owing to this neglect in performing or attempting to perform this grant, the Legislature of Louisiana, by an act approved April 30, 1877, repealed the charter of the company and all acts amendatory thereof.

The repealing act of the legislature of the State of Louisiana is as follows:

AN ACT To repeal an act entitled "An act to incorporate the New Orleans, Baton Rouge and Vicksburg Railroad Company, and to expedite the construction of their road," number one hundred and forty-three, approved December thirty, eighteen hundred and sixty-nine; and also an act entitled "An act authorizing certain parishes, cities and towns, by contributing to the New Orleans, Baton Rouge and Vicksburg Railroad Company, or by subscribing for its stock, or by purchasing its bonds, or by issuing the bonds and warrants of the said parishes, cities and towns, to aid in the construction of the road of the said company or its branch or branches," number eighty, approved March sixteen, eighteen hundred and seventy; and also an act entitled "An act authorizing the parishes of Livingston, St. Helena, East Feliciana, East Baton Rouge and the city of Baton Rouge to aid in the construction of the New Orleans, Baton Rouge and Vicksburg Railroad, number one hundred and forty-five, approved December thirty, eighteen hundred and sixty-nine.

SECTION 1. BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF LOUISIANA IN GENERAL ASSEMBLY CONVENED, That the act entitled "An act to incorporate the New Orleans, Baton Rouge and Vicksburg Railroad Company, and to expedite the construction of their road, No. 143, approved December thirty, eighteen hundred and sixty-nine; and also the act entitled "An act authorizing certain parishes, cities and towns, by contributing to the New Orleans and Vicksburg Railroad Company, or by subscribing for its stock, or by purchasing its bonds, or by issuing the bonds and warrants of said parishes, cities or towns, to aid in the construction of the road of

aid company or its branch or branches," No. (80), approved March sixteen, eighteen hundred and seventy; and also the act entitled "An act authorizing the parishes of Livingston, St. Helena, East Feliciana, East Baton Rouge, and the city of Baton Rouge to aid in the construction of the New Orleans, Baton Rouge and Vicksburg Railroad", No. 145, approved December thirty, eighteen hundred and sixty-nine, be, and the same are hereby, repealed.

SEC. 2. BE IT FURTHER ENACTED, &C., That this act shall take effect from and after its passage, and that all laws and parts of laws contrary to the provisions of this act be, and the same are hereby repealed.

In the meantime the New Orleans Pacific Railway Company was incorporated by notarial act under the general laws of the State of Louisiana, approved April 7, 1875, and the legislature of that State, by act approved February 14, 1876, confirmed its corporate existence and enlarged its powers. Said charter was further amended by an act of the legislature of said State on the 5th day of February, 1878, still further enlarging and confirming the powers and franchises of said Company.

68           On the 9th day of June, 1877, a few days after the repeal of the Charter of the New Orleans, Baton Rouge and Vicksburg Railroad Company, Jeremiah Counsellor filed his suit in the Circuit Court of the United States in and for the Fifth Circuit and District of the State of Louisiana against the New Orleans, Baton Rouge and Vicksburg Railway Company, alleging that he was the owner and holder of a quantity of its mortgaged bonds for valuable consideration paid to them, and denying the constitutionality of the act of the legislature forfeiting its franchises and corporate existence as against its acquired rights and the vested rights which he had by virtue of his ownership for valuable consideration of said mortgage bonds. The Court, after various proceedings, decided, on June 11, 1877:

"That act No. 110 of the extra session of the general assembly (the act referred to) of the State of Louisiana for

the year 1877 is unconstitutional, invalid, and without the slightest effect."

After the judgment in this case was rendered—to-wit, on the 29th of December, 1880—the board of directors of the New Orleans, Baton Rouge and Vicksburg Railway Company held a meeting at their office in the City of New York, at which the following resolution was passed:

"RESOLVED, That the president and secretary of this company be, and they are hereby, authorized to transfer to the New Orleans Pacific Railroad Company, on such terms as they shall see fit, all the right, title and interest of this company in and to the land granted to this company by an act of Congress approved March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes" and to make and execute in the name of this company such deed or instrument as shall be necessary to complete such transfer.

"On motion the meeting was adjourned subject to the call of the president.

"WM. M. BARNUM, Secretary."

On the 5th day of January, 1881, the New Orleans, Baton Rouge and Vicksburg Railway Company sold and conveyed—

"All the right, title and interest of the said party of the first part, its successors or assigns, of, in or to a certain grant of public lands granted to the said party of the first part by an Act of Congress of the United States, approved March 3, 1871, and entitled "An act to incorporate the Texas Pacific Railroad Company and to aid in the construction of its road, and for other purposes", together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise pertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof."

On the 3d day of February, 1881, the directors of the New Orleans Pacific Railway Company passed this resolution:

**RESOLVED**, That the president of this company be, and he is hereby authorized to accept the transfer to this company from the New Orleans, Baton Rouge and Vicksburg Railroad Company of the land grant made to the latter by the Act of Congress of March 3, 1871, and to execute any documents necessary to evidence the acceptance of such transfer."

At a meeting of the stockholders of the New Orleans, Baton Rouge and Vicksburg Railroad Company, on the 9th day of December, 1881, the following resolution was adopted:

**RESOLVED**, That the action of the Board of Directors and Officers of this company in transferring to the New Orleans Pacific Railway Company all the right, title, and interest of the Company to the lands granted to this Company by act of Congress approved March 3, 1871, and entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes, be, and it is hereby, approved, ratified and confirmed."

69           The New Orleans Pacific Railway Company, by virtue of all these facts, had become complete owners of all the property which had been granted by the United States to the New Orleans and Baton Rouge Railway Company, and were subrogated to all the rights of that company, subject, of course, to whatever right General Government had to forfeit this grant for failure to complete the road in time fixed by the law creating the original donation. The New Orleans Pacific Railway Company now owning the property, as stated, under grant from the General Government to the other company, was authorized to construct, own, and maintain a road from any point in the State of Louisiana to Shreveport, or to Dallas or Marshall, Texas, on any route or routes they saw proper to select. The line which this company projected was in the same general direction as the route which had been indicated by the New Orleans, Baton Rouge and Vicksburg Company on file in the General Land Office, except that the latter was on the east side of the river and the former

on the west side of the Mississippi, but within the granted limits.

The New Orleans Pacific Railroad Company, after obtaining the deed above mentioned from the New Orleans, Baton Rouge and Vicksburg Company, before the construction of any of their road, applied to the General Land Office and Interior Department for information as to the recognition of the validity of the transfer of land to it on the part of the authorities of the United States. On February 17, 1881, the Interior Department sent said Company the following answer:

DEPARTMENT OF THE INTERIOR, GENERAL LAND  
OFFICE,

Washington, D. C., February 17, 1881.

Sir: In compliance with the verbal request of Hon. J. H. Ketcham, I make the following statement:

By the twenty-second section of an act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company", &c., approved March 3, 1871, a grant of land was made to the New Orleans, Baton Rouge and Vicksburg Railroad Company for the purpose of aiding in the construction of its road.

At a special meeting of the directors of said New Orleans, Baton Rouge and Vicksburg Railroad Company, held December 29, 1880, a resolution was adopted authorizing the president and secretary of the company to transfer all the right, title, and interest of said company in and to said grant to the New Orleans Pacific Railway Company, and to make and execute such instruments as should be necessary for that purpose.

On the 5th day of January, 1881, the president and the secretary, pursuant to said authority, executed a deed in the name of the New Orleans, Baton Rouge and Vicksburg Company, conveying all the right, title, and interest of said company in and to said grant to the New Orleans Pacific Railway Company.

On the 3d day of February, 1881, the directors of the last-named company adopted a resolution authorizing the president of the company to accept said conveyance and to execute any documents necessary to evidence the acceptance.

There can be no doubt that when the president of the New Orleans Pacific Railway Company accepts said transfer the company will be fully vested with all the right, title, and interest which the New Orleans, Baton Rouge and Vicksburg Company has in and to said grant.

J. A. WILLIAMSON,  
Commissioner.

On the 21st of February, 1871, the Interior Department made the following statement:

DEPARTMENT OF THE INTERIOR, GENERAL LAND  
OFFICE,

Washington, D. C., February 21, 1881.

Sir: The president of the New Orleans Pacific Railway Company has duly accepted, in behalf of said company, the deed referred to in my letter addressed to you, dated February 17, 1881, being the deed to the said New Orleans Pacific Railway Company by the New Orleans, Baton Rouge and Vicksburg Railroad Company of all its right, title, and interest in and to the grant to said last-named company by the twenty-second section of an act of Congress entitled "An act to incorporate the Texas Pacific Railroad Company," &c., approved March 3, 1871.

The transfer by the said New Orleans, Baton Rouge and Vicksburg Railroad Company of all its right,  
70 title and interest in and to said grant to the said  
New Orleans Pacific Railway Company is now  
complete.

Very respectfully,

J. A. WILLIAMSON,  
Commissioner.

W. H. Barnum,

President of the New Orleans, Baton Rouge and Vicksburg Railroad Company.

The road was completed, accepted by the Government and classified as a land-grant road before any hostile legislation was offered in Congress.

These events in their order show that before its acceptance of the grant of land under the deed which your committee have referred to, the company was careful that their title would be effectual. The company, except as hereafter to be mentioned, built and constructed their road with the understanding with the officers of the Government that it would be entitled to the land embraced in the grant. As the road progressed in its construction the land to which it claimed title was duly certified to it and patents issued therefor, and the settlers who are on this land have acted on this theory in their purchases from the railroad company, and your committee deems it unjust, unwise, and contrary to public policy to interrupt the title to said lands which lie coterminous with the road actually built by said company. Said company have obtained money to construct their road on the idea that they were the owners of said land as construction progressed; and with a view to settle all questions of title to the land which is coterminous with the road actually built by said company, we approve of the bill.

In aid of the views which your committee entertain on this subject we desire to say that the question of the Power of Congress to forfeit the lands which the New Orleans Pacific Company claims to have earned was submitted by a joint resolution introduced by Mr. Louis, a Representative from the State of Louisiana, to the Judiciary Committee of this House on April 21, 1874, and in an exhaustive report, after reviewing all the facts and numerous citations of authorities, they conclude as follows:

"The facts already set forth with sufficient fullness satisfy your committee that the substantial fulfillment of the condition has been met by the assignee company; that



it was done under the eye of and was accepted by the executive department under the provisions of the law of Congress; that all which Congress contemplated in making the grant has been realized, and that it was done by the company on the belief of having secured the grant—a belief based upon the assurance of the Department of the Interior and upon the official action of the President of the United States in the examination of the work as it progressed in his sanction of its sufficiency under the law and in his order for the issue of patents for the land. After all this the question is, can—and if it can, ought—Congress to forfeit the land grant to this assignee company?

“Your committee think both branches of the question must be answered in the negative.”

The same questions, by a similar resolution, were submitted to the Senate and referred to the Committee on Railroads, and their report is herewith appended:

(SENATE REPORT NO. 711, FORTY-SEVENTH CONGRESS, FIRST SESSION.)

IN THE SENATE OF THE UNITED STATES.

June 7, 1882.—Ordered to be printed.

Mr. Jonas, from the Committee on Railroads, submitted the following report:

The Committee on Railroads, to whom the subject was referred, submit the following report:

A petition has been referred to the Committee on Railroads of certain citizens of Louisiana, asking for the forfeiture of the land grant made to the New Orleans, Vicksburg and Baton Rouge Railroad Company by the ninth section of the act entitled “An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of

its road, and for other purposes,” approved March 3, 1871, on the ground that the company to whom the grant was made has failed to build the road within the time prescribed by the act.

The grant was made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and as-

signs. That company was incorporated by an act of the Legislature of Louisiana, approved December 30, 1869. The object of Congress in making the grant was to aid in the construction of the proposed road, via Baton Rouge, Alexandria, and Shreveport, to connect with the eastern terminus of the Texas Pacific Railroad, and thus connect that road with the Mississippi River and the Gulf of Mexico.

The committee find that this connecting road, on almost the same line, and between the same points (if not built by the original grantees) has been built by the New Orleans Pacific Railway Company, which was organized under a charter confirmed by an act of the Legislature of Louisiana, approved February 19, 1876. This road is now completed and running between New Orleans and the eastern terminus of the Texas Pacific Railroad, at or near Marshall, Tex., its route being via Baton Rouge, Alexandria and Shreveport.

The New Orleans, Baton Rouge and Vicksburg Railroad Company (which still has corporate existence), by deed dated the 5th day of January, 1881, granted and transferred to the New Orleans Pacific Railway Company all its right, title, and interest in and to the lands granted to it by the before-mentioned act of Congress incorporating the Texas Pacific Railroad Company. This transfer was approved, ratified and confirmed at a meeting of the stockholders of the New Orleans, Baton Rouge and Vicksburg Railroad Company by a vote of two-thirds of its entire capital stock. The transfer was formally accepted by the board of directors of the New Orleans Pacific Railway Company.

The deed of transfer, a certified copy of the resolution of the stockholders of the New Orleans, Baton Rouge and Vicksburg Railroad Company ratifying the transfer, and a certified copy of the resolution of the board of directors of the New Orleans Pacific Railway Company accepting the transfer, have been filed in the Department of the Interior.

A commissioner to inspect a portion of the road built by the New Orleans Pacific Railway Company was, upon the application of that company, appointed by the Presi-

dent of the United States, and the report of the said commissioner, approving the construction of the portion of the railroad inspected by him, was duly filed in the Department of the Interior.

Application is now made for the issuance of patents to the New Orleans Pacific Railway Company for the lands granted by Congress to the New Orleans, Baton Rouge and Vicksburg Railroad Company, and by the last-named company assigned to the New Orleans Pacific Railway Company as heretofore stated.

The grant was originally made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and assigns for the purposes above stated.

The road has been built by the assignees of the grantee, and the object of the grant have been fully attained.

No forfeiture of the grant was made before the completion of the road, on the grounds alleged, and we think it would be unjust and unequitable to make such forfeiture now when the work has been completed by the assignee company, which has built the road in good faith and in full expectation of receiving the benefit of the grant which remained unforfeited and assignable in the control of their grantor.

Your committee think no consideration of public policy requires the forfeiture of the grant, and they recommend that the committee be discharged from further consideration of the memorial.

Your committee desires also in support of the views which they entertain to append to their report the opinions of the Attorney General of the United States which is embraced in a letter written by him to the Secretary of the Interior on June 13, 1882, which is as follows:

#### DEPARTMENT OF JUSTICE,

Washington, D. C., June 13, 1882.

Sir: By a letter dated the 5th of January last, your predecessors submitted to me a number of questions arising upon an application of the New Orleans Pacific Railway

Company for certain lands claimed under the land grant made to the New Orleans, Baton Rouge and Vicksburg Railroad Company by the Act of Congress of March 3, 1871, chapter 122.

72           The land grant mentioned is contained in the twenty-second section of that act, which provides:

That the New Orleans, Baton Rouge and Vicksburg Railroad Company, chartered by the State of Louisiana, shall have the right to connect, by the most eligible route, to be selected by said company, with the said Texas Pacific Railroad at its eastern terminus and shall have the right of way through the public land to the same extent granted hereby to the said Texas Pacific Railroad Company; and in aid of its construction from New Orleans to Baton Rouge, thence by the way of Alexandria, in said State, to connect with the said Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors and assigns, the same number of alternate sections of public land per mile, in the State of Louisiana, as are by this act granted in the State of California to said Texas Pacific Railroad Company; and said lands shall be withdrawn from market, selected, and patents issued therefor, and opened for settlement and redemption, upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company, within said State of California; PROVIDED. That said company shall complete the whole of said road within five years from the passage of this act."

The eastern terminus of the Texas Pacific Railroad, as fixed by the same act, was a point at or near Marshall, Tex.

The New Orleans, Baton Rouge and Vicksburg Railroad Company was incorporated by an act of the Legislature of Louisiana passed December 30, 1869, which authorized it to construct and operate a railroad "from any point on the line of the New Orleans, Jackson and Great Northern Railroad, within the Parish of Livingston, running from thence to any point on the boundry line dividing the States of Louisiana and Mississippi," the route here indicated lying east

of the Mississippi River. It was also authorized to construct and operate a branch railroad from its main line (above described) to the City of Baton Rouge; and for the purpose of connecting its railroad with the railroads of other companies, &c., it was furthermore authorized "to construct, maintain, and use, by running thereon its engines and cars, such branch railroads and tracks as it may find necessary and expedient to own and use"; and such branch railroads were, for all the purposes of the act, to be deemed and taken to constitute a part of the main line of its Railroad within the State of Louisiana.

On November 11, 1871, that company filed in the General Land Office a map designating the general route of a road projected thereby from Shreveport, by way of Alexandria, to Baton Rouge, and thereupon a withdrawal of the public lands along the same were ordered, which became effective in December following.

Subsequently, by an act of the Legislature of Louisiana, passed December 11, 1872, the same company was given "full power and authority to commence the construction of their road in the City of New Orleans or Shreveport, or at any intermediate point on their line of road, as may best suit the convenience of said company and facilitate the speedy construction of a continuous line from the City of New Orleans to the City of Shreveport, or perfect railroad communication with the Texas Pacific Railroad, or any other railroad in northwestern Louisiana, at or near the Louisiana State Line; PROVIDED, HOWEVER, That the said company shall construct the line of its road between the City of New Orleans and the City of Baton Rouge on the east side of the Mississippi River to the corporate limits of the said City of Baton Rouge or adjacent thereto."

In the meantime, by the act of Congress of May 2, 1872, chapter 132, the Texas and Pacific Railroad Company (formerly styled the Texas Pacific Railroad Company), was "authorized and required to construct, maintain, control, and operate a road between Marshall, Texas, and Shreveport, Louisiana, or control and operate any ex-

isting road between said points, of the same gauge as the Texas and Pacific Railroad." The said act further provided that "all roads terminating at Shreveport shall have the right to make the same running connections, and shall be entitled to the same privileges, for the transaction of business in connection with the said Texas and Pacific Railway, as are granted to roads intersecting therewith."

On February 13, 1873, a second map was filed in the General Land Office by the New Orleans, Baton Rouge and Vicksburg Railroad Company, designating the general route of a road projected thereby from New Orleans to Baton Rouge and a withdrawal of the public lands along the same was ordered, which took effect in April, 1873. The route between those places, those designated, lies on the east side of the Mississippi River. That company has not constructed any part of its road, either on the route between New Orleans and Baton Rouge or on the route between the latter place and Shreveport; nor, indeed, has there been a definite location of its road anywhere between the points mentioned. Nothing beyond the designation of the route thereof appears.

73 Pursuant to a resolution of its board of directors, adopted December 29, 1880, all the right, title and interest of that company in and to the aforesaid grant of public lands made by the Act of March 3, 1871, were deeded by it to the New Orleans Pacific Railway Company. This action of the Board of Directors and officers of the former company was afterwards approved and ratified by the stockholders thereof at a meeting held in December, 1881.

The New Orleans Pacific Railway Company was originally incorporated under the general laws of the State of Louisiana in June, 1875. Its charter was subsequently amended by acts of the Louisiana Legislature passed February 19, 1876, and February 5, 1878. It is thereby authorized to construct a railroad "beginning at a point on the Mississippi River at New Orleans, or between New Orleans and the Parish of Iberville, on the right bank of the Mississippi, and Baton Rouge, on the left bank, &c., or from

any point within the limits of this State, and running thence toward and to the City of Shreveport," which is made its northwestern terminus.

The route of this company as projected is understood to extend from New Orleans to Baton Rouge, and thence, by way of Alexandria, to Shreveport. Between New Orleans and Baton Rouge it lies on the west side of the Mississippi River, while the designated route of the New Orleans, Baton Rouge and Vicksburg Railroad Company, between the same points, lies on the east side of that river. Between Baton Rouge and Shreveport its general course and direction corresponds, in the main, with the route designated by the last-named company. It is throughout its entire length from New Orleans to Shreveport within the limits of the before-mentioned withdrawals of public lands.

In October, 1881, the President of the New Orleans Pacific Railway Company made affidavit that three sections of its road were then completed and ready for examination by the Government; whereupon, a commissioner was appointed to examine the same, the result of whose examination appears in a report made by him to the Secretary of the Interior, under date of the 26th of that month. One of the sections embraces 68 miles of road, beginning on the west bank of the Mississippi River, opposite New Orleans, and ending near the town of Donaldsonville; another embraces 20 miles of road near Alexandria, and the third embraces 50 miles of road terminating at Shreveport. For each of these sections lands are claimed by that company under the aforesaid land grant as assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company.

No map of definite location of any portion of its road has been filed other than those of constructed portions.

It appears that in February, 1881, the New Orleans Pacific Railway Company purchased from Morgan's Louisiana and Texas Railroad and Steamship Company the road constructed on the west bank of the Mississippi River by the New Orleans, Mobile and Texas Railroad Company, from Westmego to White Castle, a distance of 68 miles and



that the same has become a part of the main line of the road of the New Orleans Pacific Railway Company.

The following are the questions submitted:

"1. Was the grant to the New Orleans, Baton Rouge and Vicksburg Railroad Company a grant in praesenti?

"2. Had the New Orleans, Baton Rouge and Vicksburg Railroad Company, at the date of its alleged transfer of lands to the New Orleans Pacific Railway Company, such an interest in the lands, under said act, as was assignable?

"3. Is the New Orleans Pacific Railway Company such a successor to or assignee of the New Orleans, Baton Rouge and Vicksburg Railroad Company as is contemplated by said act?

"4. Should it appear that the 68 miles of the New Orleans, Mobile and Texas Railroad was constructed prior to the act of March 3, 1871, granting lands to AID IN THE CONSTRUCTION of the New Orleans, Baton Rouge and Vicksburg Railroad, can the New Orleans Pacific Company (its assignee) claim any benefit from the grant? Or, in case of such prior construction, and the nonconstruction of any portion of the New Orleans, Baton Rouge and Vicksburg road, has the purpose for which the grant was made failed and the grant consequently lapsed?

"5. If the New Orleans, Mobile and Texas road was constructed subsequently to the date of said act, is so much of its road as is now owned by the New Orleans Pacific Company such a road as is contemplated by the President within the meaning of said act, and may patents issue to the latter for lands opposite to and coterminous with such constructed portion of road?

These questions are accompanied by a request for an opinion upon such other questions of law as may suggest themselves touching the transfer of said land grant, to which reference is above made.

74 Of the above-stated questions the first three may be considered together, in connection with the following inquiry which presents itself at the outset,

whether the assent of Congress to the transfer made by the New Orleans, Baton Rouge and Vicksburg Railroad Company of all its interest in said land grant to the New Orleans Pacific Railway Company is necessary (by reason of anything in the provisions of the grant itself) to entitle the latter company to the benefit of said grant in aid of the construction of the road projected by it.

The act of March 3, 1871, passed to the New Orleans, Baton Rouge and Vicksburg Railroad Company, a present interest in a certain number of alternate sections of public lands per mile within the limits there prescribed. Its language is "There is hereby granted to said company" the number of alternate sections mentioned; words which import a grant in *PRAESENTI*, and not one *IN FUTURO*, or the promise of a grant. (97 U. S. S. Rep., 496.) But the grant thus made is in the nature of a float. It is of sections to be afterwards located, their location depending upon the establishment of the line of the road. Until this definitely fixed the grant does not attach to any specific tracts of lands. Upon the line of the road being definitely located the grant then first acquires precision, and the company becomes invested with an inchoate title to the particular lands covered thereby, which can ripen into a perfect title only as the construction of each section of 20 miles of road is completed and approved, when the right to patents for the lands opposite to and coterminous with such constructed section accrues.

The *PROVISO* in the grant that the company shall complete the whole of its road within five years from the date of the act is a condition subsequent, the failure to perform which does not *ipso facto* work a forfeiture of the grant, but only gives rise to a right in the Government to enforce a forfeiture thereof. Yet, in order to enforce a forfeiture such right must be asserted by a judicial proceeding, authorized by law, or by some legislative action amounting to a resumption of the grant. (*Schulenberg vs. Harriman*, 21 Wall., 44.) Hence, until advantage is taken of the non-performance of the condition, under legislative

authority, the interest of the grantee in the grant remains unimpaired thereby.

Such being the nature and effect of the grant and its accompanying condition, and no action having been taken either by legislation or judicial proceedings to enforce a forfeiture thereof, it follows that at the period of said transfer by the New Orleans, Baton Rouge and Vicksburg Railroad Company this company was invested with a present interest in the number of alternate sections of public lands per mile granted by the act of 1871, notwithstanding it was already in default in the performance of the condition referred to, and that it still retained a right to proceed with the construction of the road in aid of which the grant was made until advantage should be taken of the default. But as it had not then definitely fixed the line of its road, although a map designating the general route thereof was duly filed, that interest did not attach to any specific tracts of land, but remained afloat, as it were, needing a definite location of the road before it could become thus attached. Was the interest here described assignable to another company, so as to entitle the latter to the benefit of the grant in aid of the construction of ITS road between the places named therein, without the assent of Congress?

Doubt has perhaps arisen on this point in view of the fact that in one or two instances it has been thought expedient to obtain legislation by Congress confirming or authorizing a similar assignment (see Section 2 of the Act of March 3, 1865, chapter 88, and Section 1 of the Act of March 3, 1869, chapter 127), and also in view of the adverse ruling of this Department in the case of the Oregon Central Railroad Company. (13 Opin., 382.) However, a similar assignment made in 1866 by the Hannibal and Saint Joseph Railroad Company to the Pike's Peak Railroad Company, afterward known as the Central Branch Company, was held to be valid by Attorney General Stanbery in an opinion given to the Secretary of the Treasury under date of July 25, 1866.

In the latter case the Hannibal and Saint Joseph Company, which was incorporated by the State of Missouri, with

authority to construct a railroad between Hannibal and Saint Joseph, within that State, was, by the Pacific railroad act of July 1, 1862 (Section 13), authorized to "extend its road from Saint Joseph, via Atchison, to connect with the road through Kansas \* \* \* and may for this purpose use any railroad charter which has been or may be granted by the Legislature of Kansas," &c., and by the fifteenth section of the same act it was provided that "wherever the word company is used in this act it shall be construed to embrace the words their associates, successors and assigns, the same as if the words had been properly added

75 thereto. Subsequently, in 1863, an assignment was made by that company of all its rights under said act (which included an interest in both a land and a bond subsidy) to the Atchison and Pike's Peak Railroad Company, a company previously organized under a charter granted by the Legislature of Kansas. The latter company having constructed a section of 20 miles of the proposed road west from Atchison claimed the benefit of the grant made to the Hannibal and Saint Joseph Company, as its assignee, and this claim was recognized and allowed, in accordance with the opinion of the Attorney General. It will be observed, however, that the Hannibal and Saint Joseph Company was authorized to "use any railroad charter which has been or may be granted by the Legislature of Kansas," and this, together with the provision in the fifteenth section quoted above, may have been regarded as sufficient to sustain the assignment.

In the case of the Oregon Central Railroad Company, mentioned above, a grant of a right of way through the public lands, and also of alternate sections thereof, was made to that company, "and to their successors and assigns", by the Act of May 4, 1870, chapter 69, for the purpose of aiding in the construction of a railroad and telegraph line between certain places in Oregon. In August following an instrument was executed by the company assigning all its interest in the grant to the Willamette Valley Railroad Company, and thereupon the question arose whether the

grant was susceptible of being thus transferred. The Attorney General (Mr. Akerman, to whom the question was submitted, after reviewing the various provisions of the act, some of which (see section 5) imposed certain duties and required certain important acts to be performed by the company, decided in the negative holding that, upon consideration of those provisions, the Oregon Central Company was alone within the contemplation of Congress in respect of the donation made and duties imposed by that act. The words, "their successors and assigns", as used in the act, were regarded as words of limitation merely.

But the grounds upon which that decision appears to have been based are not found to exist in the case now under consideration. Here a grant of a certain number of alternate sections of public lands per mile is made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, its successors and assigns, in and of the construction of a road from New Orleans, by the route indicated, to connect with the Eastern Terminus of the Texas and Pacific Railroad, which lands are required to be "withdrawn from the market, selected, and patents issued therefor, and opened for settlement and pre-emption upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company." The grant is coupled with no special duties or trusts, for the performance of which there is reason to believe the particular company named therein was more acceptable to Congress than any other. Its purpose is to secure the construction of a railroad between the points designated, and whether this purpose be fulfilled by that company or by another company must be deemed unimportant in the absence of any provision indicative of the contrary. The interest derived by the grantee, though it remain only afloat, is a vested interest, and it is held under the same limitations which apply after it develops into an estate in particular lands until extinguished by forfeiture for nonperformance of the condition annexed to the grant. I perceive no legal obstacle arising out of the grant itself to a transfer of such interest by the grantee to another company, and should

the latter construct the road contemplated agreeably to the requirements of the grant, and thus accomplish the end which Congress had in view, I submit that it would clearly be entitled to the benefits thereof.

The question of the assignability of the interest of this grantee would be more difficult if, after definitely locating the line of its road, and thus attaching the grant to particular lands along the same, it was proposed to transfer that interest to another company for the benefit of a road to be constructed by the latter on a different line, though following the general course of the other road. But in the present case the facts give rise to no such difficulty. The grant had not previous to the transfer become thus identified with a particular line of road, and was thereafter susceptible of location upon the line of the road projected by the Assignee (the New Orleans Pacific Company), provided this road met the requirements of the grant in other respects, as to which no doubt is suggested.

My conclusion is that the assent of Congress to the assignment made by the New Orleans, Baton Rouge and Vicksburg Railroad Company as above, is not necessary in order to entitle the assignee to the benefit of the land grant in question.

The remaining questions relate to the 68 miles of railroad formerly belonging to the New Orleans, Mobile and Texas Railroad Company, but now owned by the New Orleans Pacific Company, and made a part of its main line between New Orleans and Baton Rouge.

76      The land grant in question was, as its language imports, made in AID OF THE CONSTRUCTION of a railroad between certain termini, contemplating a road to be constructed, not one already constructed. It has not been the policy of Congress thus to aid constructed roads. Had a constructed road existed at the date of the grant, which extended from one terminus to the other, and afterwards the New Orleans, Baton Rouge and Vicksburg Railroad Company, instead of entering upon and completing the construction of a road, had purchased the road already constructed, this, it seems to me, would not have satisfied the

purposes of the grant so as to entitle the company to the benefit thereof. The same objection would apply were the constructed road extended over only a part of the route contemplated by the grant. So far as I am advised, the action of the Government hitherto has accorded with this view. On the other hand, if such road was constructed subsequently to the date of the grant, and is owned by the grantee or the assignee of the latter, I see no ground for excluding it from the benefit of the grant should it otherwise fulfill the requirements thereof.

Agreeably to the foregoing views, and in direct response to the several questions submitted, I have the honor to reply as follows: The first, second and third questions I answer in the affirmative. The fourth question (including the alternative added thereto) I answer in the negative. The fifth question I answer in the affirmative—assuming, as I do, the company named therein to be an assignee of the grantee in the act referred to.

I have the honor to be, very respectfully,

BENJAMIN HARRIS BREWSTER,

Attorney General.

Hon. H. M. Teller,

Secretary of the Interior.

In support of the views of the Senate and House committees, the Attorney General of the United States, and of your present committee, we refer the House to the following authorities as bearing especially on this subject: *Ludlow v. New York and Harlem Railroad Company* (12th Barbour's Report, page 440); *People of Vermont v. The Society, &c.* (2d Payne's Report, page 562); *Willard v. Alcott* (2d New Hampshire); *Chalker v. Chalker* (1st Connecticut); *Hume v. Kent*, and *Andrews v. Suiter* (32 Maine); *Murray's lessees et al. v. Hoboken Land and Improvement Company* (18 Howard, 280); *Cooley's Constitutional Law* (page 69); *Lyttle v. State of Arkansas* (9th Howard, 383); *United States v. Arredondo* (6 Peters, 691). Many other cases could be cited, but we deem the above sufficient.



Your committee are of the further opinion that the whole grant to the New Orleans, Baton Rouge and Vicksburg Railway Company has not been earned. The road contemplated to be built on the east side of the river has not been built on either side of the river by the original or the assignee company. The grand purpose of the legislature of Louisiana and of the United States in all the legislation to which we have referred was to connect New Orleans with the Texas and Pacific system, and to induce the building of a railroad that would bring about this result. The grant, as contained in the twenty-second section of the charter of the Texas and Pacific Railroad Company, was made. The Congress of the United States did not contemplate the buying of railroads to make this connection, but the building of them; and no grant could or should inure to a road which was built by another company and purchased by the New Orleans and Pacific Railway Company. Your committee do not agree that this is a fulfillment of the terms on which the grant is to be earned.

The New Orleans and Pacific Railway Company, instead of building a railroad from New Orleans to Shreveport or the eastern terminus of the Texas Pacific system, as contemplated by the legislature of Louisiana, or the Congress of the United States, purchased a line of railroad from New Orleans to White Castle, a distance of 68 miles. This line of railroad was purchased from the Morgan and Louisiana railroad system. The land withdrawn from entry by the order of the Interior Department, dated February 13, 1873, lying coterminous with this part of the road should, in the opinion of your committee, be forfeited and restored to the public domain. The New Orleans and Pacific Company do not claim any land lying coterminous with this part of this road, and in obedience to the views of the Attorney General and of the Interior Department, as set out in opinions hereinbefore recited, they have filed in the Department of the Interior the following disclaimer by their attorney, John F. Dillion:

In the matter of the application of the New Orleans Pacific Railway Company as assignee and grantee of the New Orleans, Baton Rouge and Vicksburg Railroad Company, for the approval of the report of the Commissioner to examine the road constructed by the former company and for the issue of patents under Section 22 of the Act of March 3, 1871.

Now comes the said New Orleans Pacific Railway Company and states that it claims as the assignee and grantee of said NEW ORLEANS BATON ROUGE AND  
 77 VICKSBURG Railroad Company, the benefit of the grant of lands made by Section 22 of the Act of March 3, 1871, to said last-named company, as shown by documentary and record evidence on file in the office of the Secretary of the Interior; it also states that it has built and has in operation a road from New Orleans to Shreveport; that about 68 miles of said line of road extending from New Orleans to White Castle was acquired from another company and put in repair by the New Orleans Pacific Railway Company, and the said New Orleans Pacific Railway Company hereby disclaims any right to receive land under the said Section 22 of the Act of March 3, 1871, in respect of the said 68 miles of railroad extending from New Orleans to White Castle, but claims and insists that it is entitled to the lands granted by said Section 22 for and in respect of all of the rest and residue of the line of railway built by it extending from White Castle to Shreveport, with a branch or spur to Baton Rouge.

Dated and signed this 19th day of October, A. D. 1882.

NEW ORLEANS PACIFIC RAILWAY COMPANY,

By JOHN F. DILLON,

ITS ATTORNEY.

At a meeting of the board of directors of said company held November 10, 1882, this action of their attorney was ratified and approved.

The Blanchard-Robertson agreement, made with the New Orleans Pacific Company originated from a protest filed by Hons. E. W. Robertson and N. C. Blanchard, Members of Congress from the State of Louisiana, with the Interior Department, requesting the holding up the action of said department in patenting lands to said company until some arrangement could be made by them with said company looking to the protection of the settlers on the land in the limits of the grant. Said protest is as follows:

SIR: Referring to our interview a few evenings since with yourself, relative to the land grant claimed in Louisiana by the New Orleans Pacific Railroad Company, we hereby formally ask that further action by your department towards recognizing the said land grant as existing in favor of any party or parties be deferred for the present, and until such further action can be taken by us as will conserve the rights and interests of the people most vitally interested, viz, those living in the country in which the grant lies, and included within the limits of the fourth and sixth congressional districts of Louisiana, now represented by us.

In support of this request, we submit the following, viz:

1. A large portion of the land embraced in the grant above referred to was, by an Act of Congress passed in 1856, donated to another railroad company. Prior to 1856, many persons had settled upon this land preparatory to the entry and purchase of the same from the Government. These parties were settlers in good faith, and if the time is given us, a list of their names and the extent of their claims can be furnished. Between the year 1856 and that of 1871, a great many more persons settled upon said lands. In the meantime, somewhere about the year 1870, the original grant to the railroad company in 1856 was, by act of Congress, declared forfeited. Upon this declaration of forfeiture, the parties who had settled on the land became entitled to file their applications for entry and purchase. But before this could be done, a grant covering the land, was made by the act of Congress approved March 3, 1871,

to the New Orleans, Baton Rouge and Vicksburg Railroad Company, and under this grant the land, something over a million acres, was withdrawn from the market.

We think these parties, who had, under the circumstances above enumerated, settled on the land, are settlers in good faith, and have legal rights that should be protected.

We ask for time to present more fully the case of these settlers, and to produce their names, extent of their claims, &c.

2. Many of the parties who had settled on this land up to 1871, could not make application for the entry and purchase of the land, for the reason that a large part of the land, up to that time, had not been surveyed by the Government so as to designate the sections, townships, and ranges in which were situated the different tracts of land settled upon—the necessity for which surveys and resurveys is shown by the reports of the Commissioner of the General Land Office, made repeatedly to Congress, and asking for adequate appropriations for surveys and resurveys declared to be necessary in order to enable settlers to locate their claims, and the Government to dispose of the lands. By the failure of Congress to make these adequate appropriations the surveys and resurveys have never been completed, and hence the rights of these settlers remained in abeyance, and would now be entirely lost by the issuance to cover the land included in the grant made to the New Orleans, Baton and Vicksburg Railroad Company

78

Reserving the right to file additional and supplemental reasons and protests, we are,

Respectfully, &c.,

E. W. ROBERTSON

M. C., Sixth District, Louisiana.

N. C. BLANCHARD

M. C., Fourth District, Louisiana.

## HON. SECRETARY OF THE INTERIOR.

An agreement, known as the Blanchard and Robertson agreement, was consummated, and is contained in a communication addressed to Messrs. Blanchard and Robertson by the New Orleans Pacific Railway Company, through its President, E. B. Wheelock, on January 4, 1882. Said communication is here inserted.

Washington, January 4, 1882.

Gentlemen: In consideration of the withdrawal by you of the protest and objection filed by you with the Department of the Interior against the recognition of the claims urged by the New Orleans, Pacific Railway Company to the land grant made by the New Orleans, Baton Rouge and Vicksburg Railroad Company by the act of Congress of 1871, and now claimed by the New Orleans Pacific Company, transferees of the New Orleans, Baton Rouge and Vicksburg Company, on behalf of the said New Orleans Pacific Company and any other railroad association or combination with which the said New Orleans Pacific Company is connected, I hereby agree, consent, and obligate myself and the said company and any other company or association connected with it that the right of settlers and occupiers on the land included within the limits of said grant shall be recognized and protected as follows, to-wit:

Settlers and occupiers of any of the lands aforesaid up to this date shall be given the right within twelve months from the register of the patents issued by the Government to the said company or its transferees for said lands, in the office of the clerk of the district court and ex-officio recorder of conveyance and mortgages of the parish where the land wanted by such settlers or occupiers is situated, to file their applications with the railroad company, through agents to be designated by the company for the purpose, for the land claimed or wanted by them; such settlers or occupiers shall at the time the title deeds are issued to them, pay one-third in cash of the price of the land so occu-

pied or settled by them, and shall have one and two years from that time, with 6 per cent interest, in which to pay the remainder, mortgage and vendor's privilege to be retained by the company.

The price of land to be paid by such settlers or occupiers shall not exceed \$2 per acre, and the quantity of land to be claimed by each shall not exceed 160 acres.

Immediately upon the register of the patents in the office of the recorder of mortgages of the Parishes affected by the land grant, the railroad company shall give notice by publication for ten days in a newspaper in the Parish where any settlers or occupiers live, and also by publication at the courthouse door of such Parish, the fact of the register of patents, and that the company is ready to receive application from settlers and occupiers for the land wanted by them, and indicating the place where, and person to whom, application should be made.

Should this notice not be given immediately upon the register of the patents, these settlers and occupiers are to have twelve months in which to file their application from the time of the giving of such notice aforesaid. Proof of occupancy shall be the same as required by the laws of the United States for the acquisition of public lands, if required by the company.

**E. B. WHEELOCK**

President New Orleans Pacific Railway Company.

Hons. E. W. Robertson and N. C. Blanchard,

Representatives in Congress from Louisiana.

Accepted on behalf of settlers and occupiers.

**E. W. ROBERTSON,**

Member of Congress, Sixth District of Louisiana.

**N. C. BLANCHARD,**

Member of Congress, Fourth District of Louisiana.

79      This proposition was accepted by said Blanchard and Robertson in behalf of the people who had settled on said granted lands by letter addressed to

the Department of the Interior, dated January 4, 1882. Said letter is as follows:

Washington, January 4, 1882.

Sir: We hereby withdraw the opposition and protest filed by us to the recognition of the New Orleans Pacific Railroad Company as the grantees and transferees of the land in Louisiana granted by the Act of Congress of 1871 to the New Orleans, Baton Rouge and Vicksburg Railroad Company, and claimed by said New Orleans Pacific Company as transferees of the New Orleans, Baton Rouge and Vicksburg Company.

The object we had in filing said protest was the protection of the rights of settlers on the land covered by said grant, and as that has been obtained by agreement with the company, we do not wish to throw any further obstacle in the way of the recognition by the Department of the Interior of the rights claimed by the company.

The New Orleans Pacific Company have constructed the road running through the grant—that is to say, from New Orleans to Shreveport—and having obtained the funds with which to do so upon the faith of its right to the land grant, we think that justice demands the recognition of their claims to the land.

We are, sir, with great respect, your obedient servants.

E. W. ROBERTSON,  
Member of Congress, Sixth District of Louisiana.

N. C. BLANCHARD,  
Member of Congress, Fourth District of Louisiana.

#### THE SECRETARY OF THE INTERIOR.

This agreement has been fully acquiesced in by the General Land Office, the railroad company and the settlers, and has been the basis of all settlements made to adjust the troubles arising out of conflicting interests since it was adopted.



From the view of all the facts and authorities referred to, your committee concludes—

(1) That all that part of the grant made to the New Orleans, Baton Rouge and Vicksburg Railroad Company, embraced in the 22d Section of the charter creating the Texas and Pacific Railroad Company, situate on the east side of the Mississippi River, and that part situate on the west side of said river, which is opposite to and coterminous with the part of the New Orleans Pacific Railroad Company which was completed on the 5th day of January, 1881, should be forfeited and be restored to the public domain.

(2) That all the remainder of said grant should be confirmed, granted and conveyed unto said New Orleans and Pacific Railroad Company, said lands to be determined and located in accordance with the map filed by said New Orleans, Baton Rouge and Vicksburg Railroad Company in the Department of the Interior, which indicates the line of said railroad. This confirmation of title should take effect when said company has accepted the provision of this act and done each and every duty and obligation imposed on them or their assignor by law.

(3) That the Blanchard-Robertson agreement should be confirmed and adhered to in the settlement of all conflicting rights between the said company and the settlers on said land.

The bill under consideration represents the view of your committee on all these propositions, and we recommend its passage.

# DEED N. O. P. RY. CO. TO BREWSTER.

THIS INDENTURE, made and entered into this thirteenth day of June, 1890, by and between the NEW ORLEANS PACIFIC RAILWAY COMPANY party of the first part, and John F. Dillon and Henry M. Alexander, Trustees of the Land Grant Mortgage executed by said

- Company, April 17, 1883; and the supplemental mortgage, executed January 5th, 1884, of the second part and Horace C. Brewster, Trustee, of the City of Rochester, State of New York, of the third part.

WITNESSETH, That for and in consideration of the price and sum of Six thousand four hundred and thirty-six  $93/100$  (\$6436-93/100) paid to the party of the first part by the party of the third part, the receipt whereof is hereby acknowledged, the party of the first part has granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said Horace C. Brewster, Trustee, party of the third part, his heirs and assigns forever, the following described tracts of parcels of lands situate in the Parish of Vernon, State of Louisiana to-wit:

First—The South half of the South West quarter of Section three, containing eighty  $68/100$  (80.68) acres—The North half of the North West Quarter of Section Thirty-three, containing eighty-one  $04/100$  (81.04) acres—located in Township Two North, Range five West.

Second—The West half of the West half of Section three, containing one hundred and sixty-two  $55/100$  (162.55) acres.—The North East quarter of the North West quarter and the South East quarter of the South West quarter of Section Seven, containing eighty-one  $08/100$  (81.08) acres—The North East quarter of the North East quarter of Section twenty-nine containing forty  $55/100$  (40.55) acres—The East half of the North East quarter, the North West quarter of the South East quarter and the South East quarter of the South East of Section thirty three, containing one hundred and sixty-one  $68/100$  (161.68) acres—located in Township two North, Range Six West.

Third—The South West quarter, the South half of the North West quarter and the North West quarter of the North West quarter of Section thirteen, containing two hundred eighty-six  $23/100$  (286.23) acres—The North East quarter of the North West quarter of Section thirteen, containing forty  $93/100$  (40.93) acres—The West half of

the South East quarter and the North East quarter of the South West quarter of Section twenty-five, containing one hundred and twenty-one  $57/100$  (121.57) acres—The East half of the North East quarter, and the South East quarter of the South East quarter of Section twenty-seven, containing One hundred and nineteen  $98/100$  (119.98) acres—The West half of the North East quarter, the East half of the South West quarter and the South East quarter of the North West quarter of Section thirty-five containing one hundred and ninety-nine  $62/100$  (199.62) acres—located in Township two North, Range Seven West.

Fourth—The South East quarter of the South East quarter of Section Nine containing thirty-nine  $77/100$  (39.77) acres—The South East quarter of the South East quarter, the West half of the South West quarter, and the North West quarter of Section fifteen, containing two hundred and eighty  $00/100$  (280.00) acres—located in Township two North, Range eight West.

The area of the lands herein conveyed amounts, in the aggregate, to One thousand six hundred and ninety-five  $68/100$  (1695.68) acres.

This said sale is made by the said New Orleans Pacific Railway Company without warranty, except as against its own acts and the acts of all persons claiming or to claim by, from, through or under it. And the said John F. Dillon and Henry M. Alexander, Trustees in said Mortgages, join herein as mortgagees only and for the sole purpose of releasing, remising and quitclaiming unto said party of the third part, etc., the said property above described, and for the purpose of consenting that, as to the lands herein conveyed but only as to the same, the inscription of the said Land Grant Mortgages may be cancelled; which consent is hereby given.

The said Trustees are not to be held in any warranty in the premises; all warranty to every kind and nature being expressly excluded.

TO HAVE AND TO HOLD, the same to the said party of the third part his heirs and assigns forever, subject, however, to the payment by the said party of the third part, his heirs and assigns of all taxes assessed on said land for the year eighteen hundred and ninety (1890) and thereafter and the said New Orleans Pacific Railway Company, for itself and assigns, and for the Texas and Pacific Railway Company, hereby reserves the Right of Way across the said land one hundred (100) feet in width, together with all the timber, stone, water and material on said Right of Way necessary for railway construction, operation or maintenance.

IN WITNESS WHEREOF the said NEW ORLEANS PACIFIC RAILWAY COMPANY has caused these presents, as above set forth in duplicate original, to be signed by its President and attested by its Secretary, with the seal of the Corporation attached, and the parties of the Second and third part have duly executed the same, this thirteenth day of June, A. D. eighteen hundred and ninety (1890).

Attest:

ROBT. STRONG,  
Secretary.

E. B. WHEELOCK,  
President, New Orleans  
Pacific Railway Company.

JNO. B. WATTERMAN,  
W. M. RHODUS.

Witnesses to Trustees:

WM. J. HARDING,  
T. E. FELL,  
B. W. J. FOX.

JOHN F. DILLON,  
H. M. ALEXANDER,  
Trustees of the Land Grant Mortgage of  
the New Orleans Pacific Railway  
Company, of April 17, 1883, and  
supplemental mortgage of Jan. 5,  
1884.

State of Louisiana  
Parish of Orleans.

BE IT REMEMBERED that on this the Thirteenth day of June, A. D. 1890, personally appeared before me the undersigned authority, E. B. Wheelock, President of the New Orleans Pacific Railway Company, to me well known as such, who acknowledged before me that he had signed the foregoing deed of conveyance, and had caused the seal of said Company to be affixed thereto for the consideration and purposes herein stated.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office, this 13th day of June, A. D. 1890.

J. G. EUSTIS,  
Notary Public.

State of New York,                     }  
City and County of New York. }

BE IT REMEMBERED that on this Eighteenth day of June, A. D. 1890, personally appeared before me, the undersigned authority, John F. Dillon, and Henry M. Alexander, Trustees of the Land Grant Mortgage executed by the New Orleans Pacific Railway Company, April 17th, 1883, and the Supplemental Mortgage, executed January 5th, 1884, to me well known to be the Trustees of said Mortgages, who acknowledged before me that they had signed the foregoing deed of conveyance for the consideration and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal of office on this 18th day of June A. D. 1890.

L. S.

WM. J. HARDING,  
Commissioner of Deeds for the State of  
Louisiana, in and for the State of  
New York, resident in said City of  
New York, Offices 195 Broadway,  
New York City.

Registered in Sales Book One (1) Page 103 Land Department New Orleans Pacific Railway Company, New Orleans, La., June 9th, 1890.

E. B. WHEELOCK,  
Land Commissioner.

82        State of Louisiana }  
          Parish of Vernon. }

I hereby certify that the foregoing deed and the acknowledgments thereto, were this day duly recorded in my office, in Book of Conveyances No. "F," pages 107-108 & 109.

Given under my official signature and the impress of my official seal, at the Parish of Vernon aforesaid, on this Thirtieth (30th) day of June, A. D. 1890.

I. O. WINFREE  
Clerk and Ex-officio Recorder of Mortgages.

The original returned by mail to  
R. W. Bringhurst at Alexandria, La.  
Compared with Original.

Attest:

A TRUE COPY OF THE ORIGINAL  
CHARLEY B. FOURHEE, Clerk  
Deputy Clerk and Recorder,  
(Seal)     Vernon Parish, Louisiana.

ENDORSED: No. 884, U. S. Dist. Ct. West Dist. of La.  
United States vs N. O. P. & River Land & Lbr. Co.  
INTERROGATORIES TO H. C. BREWSTER &  
DEED FROM N. O. P. RY. CO. TO HORACE C.  
BREWSTER. Defendants Evidence. Filed Feb. 2,  
1915, Leroy B. Gulotta, Clerk, U. S. District Court,  
West Dist. of Louisiana.

## 83 DEPOSITION OF CHAS. L. PACK.

In the  
District Court of the United States for the Western  
District of Louisiana.

No. 884 In Equity.

UNITED STATES OF AMERICA,  
vs.  
NEW ORLEANS PACIFIC RAILWAY COMPANY  
and  
THE RIVER LAND & LUMBER COMPANY.

In this cause it is agreed that the deposition of Charles L. Pack be taken out of court, in writing, under oath, by any officer qualified to administer an oath and having a seal.

Commission, and all formality as to time of taking testimony are waived, but right is reserved to object to any testimony or evidence on the same grounds that might be urged were it given in open court.

GEO. WHITFIELD JACK  
United States Attorney, Atty for Plaintiff

H. H. WHITE  
Atty. for Defendant, River Land & Lbr. Co.

## 84 DIRECT INTERROGATORIES.

1. What is your name, age, residence and occupation?

2. Examine the certified copy of the deed from Horace C. Brewster, individually and as trustee, to Charles L. Pack, dated April 10th, 1900, filed April 20, 1900; and recorded Book P, pg. 151-152, Conveyance Records of Vernon Parish, La., and state if you are the Charles L. Pack, the vendee in said deed; said deed being attached to these interrogatories and marked "Exhibit D."



3. If you answer Yea to the above and foregoing interrogatory, state whether or not you purchased same in good faith—whether or not you paid the consideration expressed in said deed, whether or not you had any notice of any defect in the title to the land therein described, if any such defect existed.

4. State under what circumstances you made the purchase of the land described in said deed, whether you absolutely paid the sum of money named in the deed for the said land, and whether you expected to obtain a good and valid title to the land under your said purchase price.

5. State whether or not at the time you purchased said lands you had notice of any outstanding claims to the said land or any defects in said title, and whether or not you had any such notice down to the time of the delivery of the said deed to you and the payment of the consideration therein expressed.

6. Examine the duplicate original of the deed from George R. Nicholson to Charles L. Pack, dated August 8, 1905, filed January 7, 1907, recorded Book 11, pg. 321, records of Vernon Parish, La., and state whether or not you are the Charles L. Pack, the vendee in said deed; said deed being attached to these interrogatories and marked "Exhibit E."

7. If you answer Yea to the above and foregoing interrogatory, state whether or not you purchased same in good faith, whether or not you paid the consideration expressed in said deed, whether or not you had any notice of any defect in the title to the land therein described, if any such defect existed.

8. State under what circumstances you made the purchase of the land described in said deed, whether you absolutely paid the sum of money named in the deed for the said land, and whether you expected to obtain a good and valid title to the said land under your said purchase price.

9. State whether or not at the time you purchased the said lands you had notice of any outstanding claims to the

said land or any defects in said title, and whether or not you had any such notice down to the time of the delivery of the said deed to you and the payment of the consideration therein expressed.

10. Examine the duplicate original of the deed of Edward B. Greene to the River Land & Lumber Co., dated July 27, 1909, and December 2, 1909, filed July 15, 1910, and recorded Book 23, pg. 64, records of Vernon Parish, La., and state if you are the Charles L. Pack, President, who acted for the River Land & Lumber Co., in making the purchase of the land described in the said deed, and whether or not you, in your capacity as president, accepted the said deed; said deed being attached to these interrogatories and marked "Exhibit F."

11. If you answer Yea to the above and foregoing interrogatories, state whether or not you purchased same in good faith, whether or not you paid the consideration expressed in said deed, whether or not you had any notice of any defect in the title to the lands therein described, if any such defect existed.

12. State under what circumstances you made the purchase of the land described in said deed, whether you absolutely paid the sum of money named in the deed for the said land, and whether you expected to obtain a good and valid title to the said land under your said purchase.

13. State whether or not at the time you purchased said land you had notice of any outstanding claim to said land or any defect in said title and whether or not you had any such notice down to the time of the delivery of the said deed to you and the payment of the consideration therein expressed.

14. State what official position or relation you have to the River Land & Lumber Co., plaintiff, and what position you had with that company July 27th, 1909, and what position you now hold, if any, with the said company.

86

In the

District Court of the United States for the Western  
District of Louisiana.

No. 884 In Equity.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY,  
and

THE RIVER LAND & LUMBER COMPANY.  
CROSS INTERROGATORIES.

Cross-interrogatories to be propounded to Charles L.  
Pack:

1. Please refer to certified copy of deed from Horace C. Brewster, individually and as trustee, to yourself, which is referred to in the second direct interrogatory, and in which deed a consideration of \$7,000 cash is recited, and state when, where, and to whom said consideration was paid.

2. Please examine the duplicate original of the deed from George R. Nicholson to yourself, referred to in the 6th direct interrogatory, which deed recites a consideration of \$27,905, and state when, where, in what manner, and to whom said consideration was paid.

3. Please examine the duplicate original of the deed to Edward B. Greene to the River Land & Lumber Company, referred to in the 10th direct interrogatory, which said deed recites a consideration of \$201,000, and state when, where, in what manner, and to whom said consideration was paid.

4. Please state whether or not you were, at the time of the purchase of said land by you from Horace C. Brewster and George R. Nicholson, and at the time of the purchase of the same by the River Land & Lumber Company,

of which you were then President, a stockholder in, or director of, the New Orleans Pacific Railway Company; and if so, how long you had been such stockholder or director.

5. At the time of the purchase of the above mentioned land, and of the payment of the purchase price specified in said deeds, did you not know that the land described in said deeds had been patented by the United States to the New Orleans Pacific Railway Company under the provisions of the Land Grant Act of Congress, approved March 3, 1871, and that that portion of said land which was occupied by a bona fide actual settler at the time of the definite location of the line or road of the New Orleans Pacific Railway Company was, by the second Section of the Act of Congress approved February 8, 1887, specifically excepted from said grant?

6. At the time of said purchases above referred to, and of the payment of the prices named in said deeds, were you not aware of the fact that a large portion of the lands patented by the United States to the New Orleans Pacific Railway Company was then occupied by actual settlers, within the provision of the second Section of the Act of Congress approved February 8, 1887; and did you not know that a portion of the land described in said deeds was then in the possession of actual settlers who claimed a right to enter same under the homestead laws of the United States?

7. At the time of the delivery of said deeds hereinabove referred to, and the payment of the purchase prices therein named, did you not know that the land in controversy in this suit, to-wit: the Northeast quarter of the Northwest quarter, Section 33, Township 2 North, of Range 5 West, was in the possession of Insley Hughes, an actual settler who claimed the right to enter same under the homestead laws of the United States; and that the same had been in his possession, and cultivated by him, from the year 1880 up to the time of said purchases?

87  
8. Did you, or your agents or other representatives, examine the land described in the preceding interrogatory with a view of ascertaining whether

or not the said land was, or was not occupied by an actual settler prior to, or at the time of, the purchases above referred to?

9. State whether or not you knew, directly or indirectly, at the time of said purchase that the land described in the 7th cross-interrogatory was occupied and claimed by the said Insley Hughes?

10. In the duplicate original of the deed attached to the direct interrogatories, and referred to in direct interrogatory #10, from Edward B. Greene to the River Land & Lumber Company, warranty was expressly excluded, and you, on behalf of the River Land & Lumber Company, accepted said deed, which recites a consideration of \$201,000.00, with knowledge that the said company did not have recourse on Greene, the vendor, for the restitution of said price or otherwise. Please state, fully and in detail, why the said deed contained the exclusion of warranty, even for the return of the purchase price.

11. Please state whether or not George R. Nicholson and Edward B. Greene, or either of them, were, at the time of the sales above referred to, stockholders in, or directors of, the River Land & Lumber Company.

88            District Court of the United States for  
                 the Western District of Louisiana.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY

and

RIVER LAND & LUMBER COMPANY.

Answers of Charles L. Pack to the interrogatories propounded in the stipulation hereto attached signed by the attorneys for Plaintiff and Defendant authorizing the deposition of Charles L. Pack as admissible testimony in the trial of said cause and this day before me a Notary Public

personally appeared said Charles L. Pack and under oath makes answer as follows:

#### DIRECT INTERROGATORIES.

1. Name—Charles L. Pack. Age—Fifty-five Residence—Lakewood, New Jersey. Occupation—Lumberman.

2. I am the Charles L. Pack, vendee, in deed from Horace C. Brewster individually and as trustee dated April 10, 1900.

3. I did purchase these lands from Horace C. Brewster in good faith and paid him the consideration expressed in said deed and had no notice or knowledge of any defect in the title to the land therein conveyed.

4. The purchase of said land was one of many made in Louisiana and occurred in the ordinary course of bargain and purchase and the consideration thereof was paid in cash to said Brewster with the belief and expectation that the title was good and valid.

5. At the time of the purchase of said lands I had no knowledge or notice of any outstanding claims thereto or any defects in said title and never had any notice previous to the purchase nor thereafter until the filing of this suit.

6. I am the Charles L. Pack mentioned in the deed from George R. Nicholson described in Interrogatory 6.

7. I purchased said lands in good faith and paid the consideration therefore and had no notice of any defect of title.

8. I absolutely paid the money named in the deed for said land and expected to get a valid title to same under said purchase.

9. At the time of the purchase of said lands I had no knowledge of any outstanding claim to said land or any defect in the title thereto previous to the delivery of said deed or thereafter until the filing of this suit.



10. I am the Charles L. Pack, President, named in the deed from Edward B. Greene described in Interrogatory 10 and as President accepted said deed.

11. Edward B. Greene acted as Trustee at the request of the River Land and Lumber Company in the transfer of these lands to and from him, and the consideration for these lands was paid by the River Land and Lumber Company to the vendor of Edward B. Greene, and I had no notice or knowledge of any defect in the title to said lands.

12. We absolutely paid the money named in the deed for said lands with the expectation of receiving good and valid title thereto.

89                    13. I had no notice of any outstanding claim to said lands or any defect in the title up to the time of the delivery of said lands and payment of the consideration expressed.

14. I was a stockholder and director and president of the River Land and Lumber Company on July 27, 1909, holding the same position at this date.

#### CROSS INTERROGATORIES

1. I paid the consideration of \$7,000.00 to Horace C. Brewster as mentioned in the deed—paid to himself in Cleveland, Ohio, at the time of the delivery of the deed on or about the 10th day of April, 1900.

2. The consideration of \$27,905.00 was paid to George R. Nicholson in Cleveland on or about the 8th day of August, 1905.

3. Edward B. Green in the transfer of these lands acted as trustee at the request of The River Land and Lumber Company.

4. I have neber owned any stock in the New Orleans Pacific Railway Company and never was a director in said Company at any time.

5. At the time of the purchase of these lands



my knowledge of the title and condition of the lands was derived from a scrutiny of the certified abstracts of title and the reports of the timber and condition of the land furnished me by George R. Nicholson.

6. I had no knowledge at any time of the occupancy by settlers of the lands patented by United States to the New Orleans Pacific Railway Company except that the lands we purchased according to the reports were not occupied by any person. The fact that the lands we purchased had been patented by the United States many years ago and that they were unoccupied non-resident lands was sufficient evidence to me.

7. At the time of the delivery of said deeds I had no knowledge or notice of any occupancy of the Northeast quarter of Northwest quarter Section Thirty-three Township Two North of Range Five West in Louisiana or being in the possession of any person. The reports showed it was not occupied in any sense and no cultivation thereon.

8. I made no personal examination of the lands described in Answer 7. I accepted the written reports of men in whom I had unlimited confidence. The report shows these lands were thoroughly examined for the purpose named in interrogatory 8.

9. I had no knowledge, directly or indirectly, at the time of purchase of the land described in the 7th Cross Interrogatory that it was occupied by Insley Hughes.

10. Edward B. Greene in connection with the title of this land acted as Trustee at the request of The River Land and Lumber Company. The vendor to Edward B. Greene conveyed to him with full covenants of warranty of title, and Edward B. Greene conveyed to his vendor, The River Land and Lumber Company with special warranty of title, that is, warranting only as to his own acts but subrogated his vendee in and to all his rights and actions of warranty against all former owners and vendors of the said lands. The exception of warranty in the deed from

Edward B. Green except as to his own personal acts would be usual in the case of a trustee.

11. Neither said George R. Nicholson nor Edward B. Greene were ever stockholders or directors of The River Land and Lumber Company.

This day Charles L. Pack, of Lakewood, New Jersey, personally appeared before me, W. C. O'Leary, a Notary Public in and for the County of Ocean, State of New Jersey, and being duly sworn and declared to me that the foregoing Answers made by him are the truth to the best of his knowledge.

Witness my official signature and seal and the signature of said Charles L. Pack, signing with me at Lakewood, County of Ocean, State of New Jersey on this 22d day of October, A. D. 1914.

W. C. O'LEARY,  
Notary Public (Seal)  
CHARLES L. PACK.

Witnesses: R. RAYMOND VOORHIES,  
ARTHUR R. SMOCK.

90

## EXHIBIT "D"

State of Ohio,                    }  
County of Cuyahoga:        }

Know all men by these presents that I, Horace C. Brewster, and Horace C. Brewster, Trustee of the County of Monroe and State of New York, for and in consideration of the price and sum of Seven thousand dollars, (\$7,000), cash in hand paid by Charles L. Pack, have granted, sold and conveyed, and by these presents, do grant, sell and convey, with full subrogation to all my rights and action of warranty against all former owners and vendors, unto the said Charles L. Pack, of the City of Cleveland, and State of Ohio, all that certain tract of land situated and being in the Parish of Vernon and State of Louisiana, described as follows, to-wit:

South half of the Southwest quarter of Section Three (3), containing eighty acres and sixty-eight hundredths of an acre.

North half of the Northwest quarter of Section Thirty-three (33), containing Eighty-one and 04/100 acres, in Township Two (2), North of Range Five (5) West, Louisiana Meridian.

West half of the West half of Section Three (3), containing One Hundred and sixty-two and 55/100 acres. Northeast quarter of the Northwest quarter and Southeast quarter of the Southwest quarter of Section Seven (7), containing Eighty-one and 08/100 acres. Northeast quarter of the Northeast quarter of Section Twenty-nine (29), containing Forty and 55/100 acres. East half of the Northeast quarter, Northwest quarter of the Southeast quarter and Southeast quarter of the Southeast quarter, of Section Thirty-three (33), containing One hundred and sixty-one and 68/100 acres, all in Township Two (2), North of Range Six, (6) West, of Louisiana Meridian.

West half of Section Thirteen (13), containing Three hundred and twenty-seven and 16/100 acres. Northeast quarter of the Southwest quarter, and West half of the Southeast quarter of Section Twenty-five (25), containing One hundred and twenty-one and 57/100 acres. East half of the Northeast quarter and Southeast quarter of the Southeast quarter of Section Twenty-seven (27), containing One hundred and nineteen and 98/100 acres. West half of the Northeast quarter, Southeast quarter of the Northwest quarter, and East half of the Southwest quarter of Section (35), containing One hundred and ninety-nine and 62/100 acres, All in Township Two, (2), North of Range Seven (7), West, of Louisiana Meridian.

The Southeast quarter of the Southeast quarter of Section Nine (9), containing Thirty-nine (39) and 77/100 acres.

Northwest quarter, West half of the Southwest quarter, and Southeast quarter of the Southeast quarter of Section Fifteen (15), containing Two hundred and eighty acres, all in Township Two (2), North of Range Eight (8) West,

containing in the aggregate, Sixteen hundred and ninety-five and 68/100 acres, (1695-68/100).

To have and to hold the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto the said Charles L. Pack, his heirs and assigns forever; and I do hereby bind myself and my heirs, executors and administrators, to warrant and forever defend, all and singular the said premises unto the said Charles L. Pack, his heirs and assigns, against any persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS my hand at Cleveland, Ohio, in the presence of C. A. Paine and L. J. Carmeron, lawfull witnesses, on this tenth day of April Anno Domini, One thousand, nine hundred.

HORACE C. BREWSTER, (L. S.)

HORACE C. BREWSTER, Trustee, (L.S.)

Witnesses: C. A. PAINE,  
L. J. CAMERON.

State of Ohio }  
County of Cuyahoga } ss.

Be it remembered that on this tenth day of April, in the year one thousand and nine hundred, before me, the subscriber, a Commissioner in and for the said State, appointed by the Governor of the State of Louisiana, to take the acknowledgements, and proof of deeds and instruments of writing under seal, to be used and recorded in the said

State of Louisiana, and to administer oaths, and  
91 affirmation personally appeared Horace C. Brewster, and acknowledged that he had executed the within instrument for the uses, considerations, and purposes therein mentioned.

And I certify that the person who made the said acknowledgement is known to me to be the individual described in and who executed the within instrument in my presence, and in the presense of C. A. Paine and L. J.

Cameron two lawful witnesses, whose names are hereto attached as such.

AMOS B. McNAIRY,  
Commissioner  
(L. S.)

Witnesses: C. A. PAINE,  
L. J. CAMERON.

State of Louisiana }  
Parish of Vernon }

I hereby certify that the foregoing deed and the acknowledgments thereto were this day duly recorded in my office, in Book of Conveyances No. "P" Pages 51 & 52.

Given under my official signature and the impress of my official seal, at the Parish of Vernon, aforesaid, on this Twentieth day of April, A. D. 1900.

Z. T. CRAFT,  
Clerk and Ex-officio Recorder of Mortgages.

COMPARED WITH ORIGINAL.

ATTEST:

A TRUE COPY OF THE ORIGINAL

CHARLES B. FOURHEE,  
Deputy Clerk and Ex-officio Clerk  
Vernon Parish, Louisiana.

State of Ohio }  
County of Cuyahoga }  
City of Cleveland }

Know all men by this writing, That I, Charles L. Pack, of said City and State, for myself, my heirs and assigns, do hereby accept the conveyances and delivery of all and singular the lands and premises as described in the act on reverse hereof and preceding pages, being a deed dated the tenth day of April A. D. one thousand nine hundred, same made and executed by Horace C. Brewster for himself and as trustee, conveying to me, said Charles L. Pack, all those pieces or parcels of land situated in Vernon Parish, State of Louisiana, and described as follows, to-wit: S $\frac{1}{2}$  of SW $\frac{1}{4}$ , of Section 3, in T 2 N R 5 W of La. Mer.,

W $\frac{1}{2}$  of W $\frac{1}{2}$  of Sec. 3, NE $\frac{1}{4}$  of NW $\frac{1}{4}$  and SE $\frac{1}{4}$  of SW $\frac{1}{4}$  of Section 7, NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 29, E $\frac{1}{2}$  of NE $\frac{1}{4}$ , NW $\frac{1}{4}$  of SE $\frac{1}{4}$  and SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 33 in T 2 N 6 W of La. Mer.

W $\frac{1}{2}$  of Section 13, NE $\frac{1}{4}$  of SW $\frac{1}{4}$  & W $\frac{1}{2}$  of SE $\frac{1}{4}$  of Section 25, E $\frac{1}{2}$  of NE $\frac{1}{4}$  & SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 27, W $\frac{1}{2}$  of NE $\frac{1}{4}$ , SE $\frac{1}{4}$  of NW $\frac{1}{4}$  & E $\frac{1}{2}$  of SW $\frac{1}{4}$  of Section 35, T 2 N 7 W of La. Mer., N $\frac{1}{2}$  of NW, Sec. 33 in T 2 N 5 W La. Mer.

SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 9, NW $\frac{1}{4}$ , W $\frac{1}{2}$  of SW $\frac{1}{4}$  & SE $\frac{1}{4}$  of SE $\frac{1}{4}$  of Section 15 T 2 N R 8 W, aggregating in all, 1695.68 acres.

In testimony whereof witness my signature this 3d day of September A. D. 1903 in presence of George R. Nicholson and Edward E. Newman lawful male witnesses.

CHARLES L. PACK  
(L. S.)

Witnesses

GEORGE R. NICHOLSON  
EDWARD E. NEWMAN

92      State of Ohio      }  
          County of Cuyahoga }

Before me a Notary Public in and for said State and county, on this 3rd day of September A. D. 1903 personally came and appeared Charles L. Pack to me known to be the identical person described in and who signed and executed the above act of acceptance who being duly sworn acknowledged to me in the presence of George R. Nicholson and Edward E. Newman competent male witnesses that he signed the same as his own free act and deed & for the uses & purposes therein expressed.

In testimony whereof I hereunto set my official signature and affix my seal of office this 3d day of September A. D. 1903, said witnesses signing with me, Notary.

R. K. GOWANLOCK  
Notary Public.

Commission expires June 24th, 1906.

Witnesses

GEORGE R. NICHOLSON

EDWARD E. NEWMAN.

Compared with original.

Attest:

A true copy of the original

CHARLES B. FOURHEE

Deputy Clerk and Recorder,

Vernon Parish, Louisiana.

93

## EXHIBIT E

State of Ohio

City of Cleveland

County of Cuyahoga

KNOW ALL MEN BY THESE PRESENTS: That, I, the undersigned George R. Nicholson, a married man, of the City of Cleveland, State of Ohio, in consideration of twenty seven thousand nine hundred and five (27,905) dollars, the receipt whereof is hereby acknowledged, to me in hand paid by Charles L. Pack, of Lakewood, State of New Jersey, do by these presents bargain, sell, grant and convey to said Charles L. Pack, all the undivided interest as hereinafter named in and to all those certain pieces and parcels of land lying and being in the Parish of Vernon, State of Louisiana, and described as follows, to-wit: ALL NORTH OF BASE LINE AND WEST OF LOUISIANA PRINCIPAL MERIDIAN An undivided one-fourth interest in and to all the lands hereinafter described, towit:

Township two (2) Range five (5).

Southwest quarter of Northwest quarter, Northwest quarter of Southwest quarter, South half of Southwest quarter of Section three (3), Southwest quarter of Northeast quarter, Northeast quarter of Southeast quarter of Section four (4) Southwest quarter of Northeast quarter of Section five (5), North half of Northeast quarter of Section twelve



(12), Southwest quarter of Section twenty-two (22, North half of Northwest quarter of Section thirty-three (33)

Township three (3) Range five (5)

Entire Section sixteen (16), Southeast quarter of Northwest quarter, Northeast quarter of Southwest quarter of Section twenty-four (24), Northwest quarter of Southwest quarter of Section twenty-nine (29), South half of Section thirty (30), North half of Northeast quarter of Section thirty-one (31), Southwest quarter of Northeast quarter, Southeast quarter of Northwest quarter, East half of Southwest quarter, Southwest quarter of Southeast quarter, North half of Southeast quarter of Southeast quarter of Section thirty-two (32), Northeast quarter of Southeast quarter, South half of Southeast quarter of Section thirty-three (33), Southeast quarter of Northeast quarter, Southeast quarter of Section thirty-four (34), North half of Northwest quarter, Southwest quarter of Northwest quarter, West half of Southwest quarter of Section thirty-five (35).

Township four (4) Range five (5)

North half of Northeast quarter, Northwest quarter of Section thirty-one (31).

Township two (2) Range six (6).

West half of West half of Section three (3), Northeast quarter of Southwest quarter of Section five (5), Southwest quarter of Northwest quarter, West half of Southwest quarter, less two (2) acres in Northeast corner of said Southwest quarter of Southwest quarter, Northeast quarter of Southwest quarter of Section six (6), Northeast quarter of Northwest quarter, Southeast quarter of Southwest quarter of Section seven (7), Southwest quarter of Northeast quarter, Southeast quarter of Southeast quarter of Section twelve (12), Northeast quarter of Northeast quarter of Section twenty-nine (29), Southwest quarter of Northwest quarter, Northwest quarter of Southeast quarter of Section thirty-two (32), East half of Northeast quarter, Northwest quarter of Southeast quarter, Southeast quarter of Southeast quarter of Section thirty-three (33).

Township three (3) Range six (6).

East half of Northeast quarter of Section four (4), Entire Section eleven (11) Southeast quarter of Northeast quarter, Northeast quarter of Southeast quarter of Section sixteen (16).

Township four (4) Range six (6).

North half of Section, Northeast quarter of Southwest quarter, North half of Northwest quarter of Southwest quarter Southeast quarter of Southeast quarter of Section sixteen (16).

Township two (2) Range seven (7).

East half of Northeast quarter of Section six (6), Southeast quarter of Southeast quarter of Section eight (8), Northwest quarter of Northwest quarter of Section twelve (12), west half of Section thirteen (13), Northeast quarter of Southwest quarter, West half of Southeast quarter of Section twenty-five (25), East half of Northeast quarter,

94      Southeast quarter of Southeast quarter of Section twenty-seven (27), West half of Northeast quarter, Southeast quarter of Northwest quarter, East half of Southwest quarter of Section thirty-five (35), West half of Section thirty-six (36).

Township three (3) Range seven (7)

Northeast quarter of Section, East half of Northwest quarter, Southwest quarter of Section, North half of Southeast quarter, Southeast quarter of Southeast quarter of Section six (6), South half of Section nine (9), Northeast quarter of Northwest quarter of Section ten (10), North half of Northeast quarter, Northeast quarter of Northwest quarter of Section eighteen (18), Northeast quarter of Northeast quarter, South half of Northeast quarter of Section thirty-four (34).

Township four (4) Range seven (7).

Northeast quarter of Section, South half of Section four (4), East half of Southeast quarter of Section five (5), Northwest quarter of Section seven (7), East half of Northeast quarter, South half of Northwest quarter of Section eight (8), Southwest quarter of Northeast quarter,

Northeast quarter of Northwest quarter of Section fourteen (14), North half of Section sixteen (16), North half of Northwest quarter of Section eighteen (18), North half of North half of Section twenty-two (22), Northwest quarter of Northwest quarter, South half of Northwest quarter of Section twenty-four (24), saving and reserving seven and seventy-four one-hundredths ( $7\frac{74}{100}$ ) acres situated in the Southeast corner of the Northwest quarter of Northwest quarter of said Section twenty-four (24), Southwest quarter of Section twenty-four (24), South half of Southwest quarter, Northwest quarter of Southeast quarter of Section twenty-five (25), Northwest quarter of Northwest quarter, Southwest quarter of Southeast quarter of Section twenty-six (26), South half of Northeast quarter, Northwest quarter of Section, North half of Southwest quarter, Southwest quarter of Southwest quarter of Section twenty-eight (28), North half of Northeast quarter, North half of Southeast quarter, Southwest quarter of Southeast quarter of Section thirty-two (32).

Township two (2) Range eight (8).

Southeast quarter of Southeast quarter of Section nine (9), Northwest quarter of Section, West half of Southwest quarter, Southeast quarter of southeast quarter of Section fifteen (15).

Township three (3) Range eight (8).

Southeast quarter of Northeast quarter, Northeast quarter of Southeast quarter of Section seven (7), Southwest quarter of Southwest quarter of Section nine (9), Southwest quarter of Northwest quarter, Southeast quarter of Southeast quarter of Section fourteen (14), Northeast quarter of Northeast quarter, Southeast quarter of Southeast quarter of Section nineteen (19), West half of Northeast quarter of Section twenty-nine (29), West half of Section thirty-six (36).

Township four (4) Range eight (8).

Northwest quarter of Northwest quarter, Southeast quarter of Northwest quarter of Section four (4), Northeast quarter of Northwest quarter of Section seven (7),

Northeast quarter of Section, West half of Section sixteen (16), South half of Southeast quarter of Section twenty-one (21), East half of Southwest quarter, Northeast quarter of Southeast quarter, South half of Southeast quarter of Section twenty-two (22), Southwest quarter of Northeast quarter, Southeast quarter of Northwest quarter of Section twenty-three (23) North half of Northwest quarter of Section twenty-four (24), Northwest quarter of Northeast quarter, Northwest quarter of Section, North half of Southwest quarter of Section twenty-seven (27), Southeast quarter of Northeast quarter, South half of Southeast quarter of Section twenty-eight (28), Northwest quarter of Northeast quarter, Northeast quarter of Northwest quarter, Southwest quarter of Southeast quarter of Section thirty-three (33), Southwest quarter of Northeast quarter, Northeast quarter of Southeast quarter of Section thirty-four (34), South half of Northwest quarter of Section thirty-six (36). The undivided one-fourth interest herein conveyed in the lands hereinbefore described, aggregates thirty-one hundred and thirty-five and fifty-eight one-hundredths (3135-58/100) acres, more or less, according to the United States survey thereof.

TO HAVE AND TO HOLD the said lands and premises herein conveyed unto said Charles L. Pack, his heirs and assigns forever, with full Covenants of Warranty of title from said George R. Nicholson, his heirs and assigns,

provided the said Liability of Warranty

provided the said Liability of Warranty of said

George R. Nicholson, his heirs and assigns, under

this instrument shall not exceed the pro rata

amount per acre of the purchase price received by him from

said Charles L. Pack for the lands herein conveyed, and

said purchase price paid by said Charles L. Pack for this

sale and transfer of the lands herein conveyed is based on

the pine timber that may be found thereon, and hereby sub-

rogating said purchaser, his heirs and assigns, in and to

all the rights and actions of warranty of said George R.

Nicholson against all former owners and vendors of the

lands and premises herein conveyed. In consideration of

the purchase price aforesaid, I, said George R. Nicholson, hereby further sell, assign and transfer to said Charles L. Pack, without recourse on me of any kind, all and singular, any rights, demands, claims and causes of action that I may have against any persons, firms or corporations, by reason of any trespass heretofore committed by any such persons, firms or corporations, upon any of the lands herein conveyed, hereby authorizing said Charles L. Pack, his heirs and assigns, to bring, maintain and prosecute, at his own expense, all such actions and proceedings at law as he may deem necessary or proper to enable him to enforce any rights, claims and causes of action hereby transferred.

SAID Charles L. Pack signs and executes this instrument for the purpose of accepting same, and, all and singular, this transfer of the lands and premises herein conveyed.

WITNESS THE SIGNATURES OF SAID George R. Nicholson and Charles L. Pack in presence of Henry R. Hatch and Orris G. Squire, competent male witnesses and the undersigned Notary, at the City of Cleveland, State of Ohio, on the eighth day of August, A. D. Nineteen hundred and five.

Signed and executed in duplicate.

GEORGE R. NICHOLSON  
CHARLES L. PACK.

Witnesses:

HENRY R. HATCH  
ORRIS G. SQUIRE

State of Ohio  
City of Cleveland  
County of Cuyahoga

}

BEFORE ME, Robert K. Gowanlock, a duly qualified Notary Public, in and for the County of Cuyahoga, State of Ohio, on this day personally appeared George R. Nicholson and Charles L. Pack, known to me to be the identical persons named in and who signed and executed the foregoing instrument; said instrument being an act of sale and con-

veyance dated August the eighth A. D. 1905, wherein said George R. Nicholson conveys to said Charles L. Pack an undivided one-fourth interest in and to 12542-31/100 acres of land situate in Vernon Parish, State of Louisiana. Said appearers being severally duly sworn declared to me in presence of Henry R. Hatch and Orris G. Squire, competent male witnesses that they signed same as their own free act and deed for the uses, purposes and considerations therein expressed.

IN TESTIMONY WHEREOF, Witness my official signature and seal of office; also, the signatures of said witnesses signing with me, Notary, at said City of Cleveland, State of Ohio, on this eighth day of August, A. D. 1905.

R. K. GOWANLOCK  
Notary Public.

Witnesses

HENRY R. HATCH  
ORRIS G. SQUIRE

State of Louisiana }  
Parish of Vernon }

Office of Clerk of Court and Recorder at  
Leesville, Louisiana.

I HEREBY CERTIFY that the foregoing instrument dated the 8th day of August, A. D. 1905; said instrument being an act of sale and conveyance signed by George R. Nicholson, grantor and Charles L. Pack, grantee, conveying an undivided one-fourth interest in 12542-31/100 acres of land situate in said Parish of Vernon, was filed in my office for record on the Seventh day of January, A. D. 1907, at 9 o'clock A. M., and duly recorded on pages 321 et seq. of Notarial Record, Volume 11 of the Official Records of said Vernon Parish, State of Louisiana.

IN TESTIMONY WHEREOF, Witness my official signature and seal on this 26 day of August, A. D. 1914.

CHARLES B. FOURHEE,  
Deputy Clerk and Ex-Officio Recorder.



Compared with original.

Attest: A true copy of The original

**CHARLES B. FOURHEE**

Ceputy Clerk and Recorder,  
Vernon Parish, Louisiana.

97                   KNOW ALL MEN BY THESE PRESENTS:—That Edward B. Green, of Cleveland, State of Ohio, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell, transfer and deliver unto the River Land and Lumber Company, a corporation organized and existing under and by virtue of the Laws of the State of New Jersey and authorized to transact business in the State of Louisiana, all of the following lands situate in the Parish of Vernon, State of Louisiana, to-wit:

TOWNSHIP TWO (2) NORTH, OF RANGE FIVE  
(5) WEST OF LOUISIANA PRINCIPAL MERIDIAN:

Southeast quarter of Section Two, Southwest quarter of northwest quarter; northwest quarter of southwest quarter, and south-half of southwest quarter of Section Three (3); southwest quarter of northeast quarter and northeast quarter of southeast quarter of section Four (4); southwest quarter of Northeast quarter, of Section Five (5); west half of Section Ten (10); North half of Northeast quarter of Section Twelve (12); southwest quarter of Section Twenty-two (22); north half of Northwest quarter of Section Thirty-three (33), Township Three North of Range Five West, of Louisiana principal meridian; entire Section Sixteen (16); south half of south half of Section Twenty-one (21); southeast quarter of southeast quarter of Section Twenty-two (22); southwest quarter of southwest quarter of Section Twenty-three (23); southeast quarter of Northwest quarter and northeast quarter of southwest quarter of Section Twenty-four (24); northwest quarter of southwest quarter of Section Twenty-nine (29); south half of Section Thirty (30); north half of north east quarter of section thirty-one (31); southwest quarter of



northeast quarter, southeast quarter of northwest quarter,  
 east half of Southwest quarter, southwest quarter of south-  
 east quarter and north half of Southeast quarter of south-  
 east quarter of Section Thirty-two (32); northeast quar-  
 ter of southeast quarter and south half of southeast quar-  
 ter of Section Thirty-three (33); southeast quarter of north-  
 east quarter and southeast quarter of Section Thirty-four  
 (34); northwest quarter northeast quarter, northeast quar-  
 ter of northwest quarter and the west half of the west half  
 of Section Thirty-five (35), Township Four (4) North, of  
 Range Five (5) West of Louisiana Principal Meridian:  
 North half of Northeast quarter and West half of Section  
 Thirty-one (31). Township Two (2) North, of Range Six  
 (6) West of Louisiana Principal Meridian West half of  
 West half of Section Three (3); Northeast quarter of  
 Southwest quarter of Section Five (5); Southwest quarter  
 of Northwest quarter, North half of Southwest quarter and  
 Southwest quarter of Southwest quarter, less Two (2) acres  
 in Northeast corner thereof, of Section Six (6); Northeast  
 quarter of Northwest quarter and Southeast quarter of  
 Southwest quarter of Section Seven (7); Southwest quar-  
 ter of Northeast quarter and Southeast quarter of South-  
 east quarter of Section Twelve (12); Northeast quarter  
 of Northeast quarter of Section Twenty-nine (29); South-  
 west quarter of Northwest quarter and Northwest quarter  
 of Southeast quarter of Section Thirty-two (32 East half of  
 Northeast quarter, Northwest quarter of Southeast quarter  
 and Southeast quarter of Southeast quarter of Section  
 Thirty-three (33). Township Three (3) North, of Range  
 Six (6) West of Louisiana Principal Meridian; West half  
 of Northwest quarter of Section Three (3); East half of  
 Northeast quarter of Section Four (4); Northwest quarter  
 of Northwest quarter of Northeast quarter, North half of  
 Northeast quarter of Northwest quarter and Southwest  
 quarter of Northeast quarter of Northwest quarter of Sec-  
 tion Six (6); Southwest quarter of Southwest quarter of  
 Section Ten (10); Entire Section Eleven (11); Southeast  
 quarter of Northeast quarter less Six (6) acres on West

Side; Northeast quarter of Southeast quarter, North half of Northeast quarter of Northwest quarter and Southwest quarter of Northeast quarter of Northwest quarter of Section Sixteen (16); North half of Northeast quarter of Section Twenty-five (25). Township Four (4) North, of Range Six (6) West of Louisiana Principal Meridian; North half of Section, Northeast quarter of Southwest quarter, North half of Northwest quarter of Southwest quarter, Southeast quarter of Northwest quarter of Southwest quarter and Southeast quarter of Section Sixteen (16); South half of North half of Northwest quarter, South half of Southwest quarter of Northwest quarter and Southeast quarter of Northwest quarter of Section Twenty (20); South half of Northeast quarter, Southeast quarter of Northwest quarter and Northwest quarter of Southeast quarter of Section Twenty-five (25).

Township Two (2) North, of Range Seven (7) West of Louisiana Principal meridian; East half of Northeast quarter of Section Six (6); Southeast quarter of Southeast quarter of Section Eight (8); Northwest quarter of Northwest quarter of Section Twelve (12); 98 West half of Section Thirteen (13); Northeast quarter of Southwest quarter and West half of Southeast quarter of Section Twenty-five (25); East half of Northeast quarter and Southeast quarter of Southeast quarter of Section Twenty-seven (27); West half of Northeast quarter, Southeast quarter of Northwest quarter and East half of Southwest quarter of Section Thirty-five (35); West half of Section Thirty-six (36).

Township Three (3) North, of Range Seven (7) West of Louisiana Principal Meridian: Northeast quarter, East half of Northwest quarter, Southwest quarter, North half of Southeast quarter and Southeast quarter of Southeast quarter of Section Six (6); South half of Section Nine (9); Northeast quarter of Northwest quarter of Section Ten (10); North half of Northwest quarter and Northeast quarter of Northwest quarter of Section Eighteen (18);

Northeast quarter of Northeast quarter and South half of Northeast quarter of Section Thirty-four (34).

Township Four (4) North, of Range Seven (7) West of Louisiana Principal Meridian: Northeast quarter and South half of Section Four (4); East half of Southeast quarter of Section Five (5); Northwest quarter of Section Seven (7); East half of Northeast quarter and South half of Northwest quarter of Section Eight (8); Southwest quarter of Northeast quarter and Northeast quarter of Northwest quarter of Section Fourteen (14); North half of Section Sixteen (16); North half of Northwest quarter of Section Eighteen (18); North half of North half of Section Twenty-two (22); East half of Southwest quarter of Northeast quarter, Southeast quarter of Northeast quarter, Northwest quarter of Northwest quarter less Seven and seventy-four hundredths (7.74) acres in Southeast corner, South half of Northwest quarter, Southwest quarter and Northwest quarter of Southeast quarter of Section Twenty-four (24); South half of Southwest quarter and Northwest quarter of Southeast quarter of Section Twenty-five (25);

Northwest quarter of Northwest quarter and Southwest quarter of Southeast quarter of Section Twenty-six (26); South half of Northeast quarter, Northwest quarter, North half of Southwest quarter and Southwest quarter of Southwest quarter of Section Twenty-eight (28); North half of Northeast quarter, North half of Southeast quarter and Southwest quarter of Southeast quarter of Section Thirty-two (32).

Township Two (2) North, of Range Eight (8) West of Louisiana Principal Meridian: Southeast quarter of Southeast quarter of Section Nine (9); Northwest quarter, West half of Southwest quarter and Southeast quarter of Southeast quarter of Section Fifteen (15).

Township Three (3) North, of Range Eight (8) West of Louisiana Principal Meridian: Northwest quarter of Section Two (2); Southeast quarter of Northeast quarter and Northeast quarter of Southeast quarter of Section Seven (7); Southwest quarter of Southwest quarter of Sec-

tion Nine (9); Southwest quarter of Northwest quarter and Southeast quarter of Southeast quarter of Section Fourteen (14); Northeast quarter of Northeast quarter and Southeast quarter of Southeast quarter of Section Nineteen (19); Northwest quarter of Section Twenty-four (24); West half of Northeast quarter of Section Twenty-nine (29); West half of Section Thirty Six (36).

Township Four (4) North, of Range Eight (8) West of Louisiana Principal Meridian: Northwest quarter of Northwest quarter and Southeast quarter of Northwest quarter of Section Four (4); Northeast quarter of Northwest quarter of Section Seven (7); North half and Southwest quarter of Section Sixteen (16); South half of Southeast quarter of Section Twenty-one (21); East half of Southwest quarter, Northeast quarter of Southeast quarter and South half of Southeast quarter of Section Twenty-two (22); Southwest quarter of Northeast quarter of Southeast quarter of Northwest quarter of Section Twenty-three (23); North half of Northwest quarter of Section Twenty-four (24); Northwest quarter of Northeast quarter, Northwest quarter and North half of Southwest quarter of Section Twenty-seven (27); Southeast quarter of Northeast quarter and South half of Southeast quarter of Section Twenty-eight (28); Northwest quarter of Northeast quarter, Northeast quarter, of Northwest quarter and Southwest quarter of Southeast quarter of Section Thirty-three (33); Southwest quarter of Northeast quarter and Northeast quarter of Southeast quarter of Section Thirty-four (34); South half of Northwest quarter of Section Thirty-six (36). Township Four (4) North, of Range six (6) West of Louisiana Principal Meridian: All the pine timber on the North half of Southwest quarter of Northwest quarter of Section twenty (20), with same right of way

99 to remove this timber that was granted in a deed from Frank D. Jackson, Grantor, to George R. Nicholson and expressed in said deed thus:—"with full right of way to remove said timber at any time within fifty (50) years from and after June Second, Nineteen hundred

and six, and right of way to remove and cross said last described land in the operation of cutting or logging any other timber owned by George R. Nicholson, his heirs and assigns”.

The said lands contain Fourteen thousand four hundred thirty-nine and thirty-four hundredths (14,439.34) acres more or less, according to the United States survey thereof

TO HAVE AND TO HOLD the above described premises together with, all and singular, the rights and appurtenances thereunto in anywise belonging unto the said River Land and Lumber Company, its successors and assigns, forever; with full subrogation in and to all the rights of action of warranty of said Edward B. Greene against all former owners and vendors of said lands or any part thereof; provided, this sale is made by said Edward B. Greene without warranty, except as against his own acts, and without recourse on him for restitution of price or otherwise. This sale is made for the consideration and sum of Two hundred and one thousand (\$201,000.00) dollars the receipt whereof is hereby acknowledged.

The said River Land and Lumber Company hereby accepts for itself, its successors and assigns, this sale, transfer and delivery of the lands hereinbefore described and consents to the provisions and conditions as set forth in this instrument.

IN WITNESS WHEREOF the said Edward B. Greene has signed his name and affixed his seal hereto at Cleveland, State of Ohio, in the presence of Edward L. Worthington and F. S. Curtiss competent male witnesses, on this twenty-seventh day of July, in the year of our Lord Nineteen hundred and nine, and

IN WITNESS WHEREOF the said River Land and Lumber Company has caused its name and seal to be affixed hereto by its President, Charles L. Pack at City of New York, State of New York, in the presence of Alfred A. Wheat and William S. Woodhull, competent male wit-

nesses on this second day of December, in the year of our Lord Nineteen hundred and nine.

Witnesses:

As to Edward B. Greene  
EDWARD L. WORTHINGTON  
E. S. CURTISS

As to River Land and Lumber Co. and Charles L. Pack  
ALFRED A. WHEAT  
WILLIAM S. WOODHULL.

EDWARD B. GREENE  
RIVER LAND AND LUMBER COMPANY

By Charles L. Pack  
Attest CHARLES I. HICKEY,  
Secretary.

State of Ohio }  
County of Cuyahoga } ss.

Before me, R. K. Gowanlock, a duly qualified Notary Public in and for the State and County aforesaid, and in the presence of Edward L. Worthington, and E. S. Curtiss competent male witnesses, on this twenty-seventh day of July, A. D. 1909, personally appeared Edward B. Greene, to me known and known to me to be the person described in and who signed and executed the foregoing instrument conveying 14,439.34 acres of land, more or less, in Vernon Parish, Louisiana, to the River Land and Lumber Company, and who acknowledged before me, in the presence of said witnesses, that he executed the same as his fee act and deed and for the uses and purposes therein expressed.

Witness my official signature and seal of office on the date above written, said witnesses signing with me, Notary.

Witnesses:

EDWARD L. WORTHINGTON  
E. S. CURTISS.

R. K. GOWANLOCK  
Notary Public.



100      State of New York      }  
           County of New York    } ss.

Before me, Arthur T. Rouaghan, a duly qualified Notary Public, in and for the State and County aforesaid and in the presence of Alfred A. Wheat and William S. Woodhull, competent male witnesses, on this second day of December, A. D. 1909, personally appeared Charles L. Pack, President of the River Land and Lumber Company, to me known and known to me to be the President of said Company and the person described in and who signed and executed the foregoing instrument conveying 14,439.34 acres of land, more or less, in Vernon Parish, Louisiana, and who acknowledged before me in the presence of said witnesses that he executed the same as his free act and deed and as the free act and deed of the said River Land and Lumber Company and for the uses and purposes therein expressed.

Witness my official signature and seal of office on the day above written said witnesses signing with me, Notary. Witnesses:

ALFRED A. WHEAT

WILLIAM S. WOODHULL

(Seal)

ARTHUR J. ROUAGHAN,

Notary Public, N. Y. Co.

Commission expires March 30, 1910.

COMPARED WITH ORIGINAL

ATTEST:

A True Copy of the Original

CHARLEW B. FOURHEE

(Seal).

Deputy Clerk and Recorder

Vernon Parish, Louisiana.

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ENDORSED: DEED Edward B. Greene to The River Land & Lumber Company. Vernon Pa. Louisiana, 14,439.34/100 acres, July 27, 1909. Compared with Original. No. 675 Filed 15 day of July 1910 and recorded 16 day of July 1910, in Vol 23 page 64-68 Con-



veyances record Vernon Parish. A. G. Winfree, Clerk By R. H. Benham, Deputy. No. 675. Filed 15 day of July, 1910, and recorded 16 day of July 1910, in vol 23 page 64 Conveyance record Vernon Parish, A. G. Winfree Clerk, By R. H. Bonham, Deputy.

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ENDORSED: No. 884 Eq. U. S. District Court, West Dist. of Louisiana. United States vs N. O. Pacific Ry. Co. and River Land & Lumber Co. DEPOSITION OF CHARLES L. PACK. Taken Oct. 22, 1914, before W. C. O'Leary, Not. Pub at Lakewood, N. J. Filed Nov. 21, 1914, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

101 DEPOSITION OF EDWARD B. GREENE.

In the District Court of the United States for the Western District of Louisiana.

No. 884 In Equity.

UNITED STATES OF AMERICA,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY

and

THE RIVER LAND & LUMBER COMPANY.

In this cause it is agreed that the deposition of Edward B. Greene be taken out of court, in writing, under oath, by any officer qualified to administer an oath and having a seal.

Commission, and all formality as to time of taking testimony are waived, but right is reserved to object to any testimony or evidence on the same grounds that might be urged were it given in open court.

GEO. WHITFIELD JACK

United States Attorney, Atty. for Plaintiff

H. H. WHITE

Atty for Defendant, River land & Lbr. Co.

102      In the District Court of the United States  
         for the Western District of Louisiana.

**No. 884   In Equity**

**UNITED STATES OF AMERICA,**

**vs.**

**NEW ORLEANS PACIFIC RAILWAY COMPANY,  
and the**

**RIVER LAND & LUMBER COMPANY.**

**CROSS INTERROGATORIES**

Cross-interrogatories to be propounded to Edward B. Greene.

1. Please examined the duplicate original deed from Charles L. Pack to yourself, hereto attached, and referred to in the second direct interrogatory, which said deed recites a consideration of \$201,000.00, and state when, where, to whom, and in what manner, said consideration was paid.
2. State whether or not you are the Edward B. Greene who sold the land described in the deed above referred to, to the River Land & Lumber Company on the 2nd of December, 1909, for the consideration of \$201,000.00; and if so, please explain why you purchased said lands from Charles L. Pack for the same price in July 1909, and in December of said year conveyed the same to the River Land & Lumber Company, represented by Charles L. Pack?
3. In the deed from yourself to the River Land & Lumber Company dated the 2nd of December, 1909, warranty is excluded: said sale having been made without recourse on you for restitution of the price or otherwise. Please state why warranty was excluded in said sale.
4. Please state whether or not you were, at the time of your purchase of said lands, a stock-holder in, or director of, the New Orleans Pacific Railway Company, and if so, how long you had been such stockholder or director.

5. At the time of your purchase, and of the payment of said purchase price, did you not know that the land described in said deed had been patented by the United States to the New Orleans Pacific Railway Company, one of your authors in title, under the provisions of the Land Grant Act of Congress, approved March 3, 1871, and that that portion of said land which was occupied by a bona fide actual settler at the time of the definite location of the line or road of the said Railway Company, was, by the second Section of the Act of Congress approved February 8, 1887, expressly excepted from said grant?

6. At the time of your purchase, and of the payment of the price named in your deed, were you not aware of the fact that a large portion of the lands patented by the United States to the New Orleans Pacific Railway Company was then occupied by actual settlers? And that the portion of the land described in your deed was in the possession of actual settlers, who claimed a right to enter the same under the homestead laws of the United States?

7. At the time of the delivery of your deed, and the payment of the purchase price, did you not know that the land in controversy in this suit, namely, the NE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 33, T. 2 N., of Range 5 West, was in the possession of Insley Hughes, an actual settler, who claimed the right to enter the same under the homestead laws of the United States; and that the said land had been continuously occupied and cultivated by him from the year 1880 up to the time of your said purchase?

8. Did you, or your agents or other representatives, examine the land or estimate the timber thereon prior to your purchase thereof?

9. State whether or not you made, or caused to be made, any examination of said lands, or inquiry in regard to same, to ascertain whether or not the same was or was not occupied by an actual settler at the time of your purchase.

10. Please state whether or not you were, at the time of your purchase of said lands, or at the time of your sale thereof to the River Land & Lumber Company, a stockholder in, or director of the said River Land & Lumber Company.

104

United States District Court  
Western District of Louisiana.

No. 884 In Equity

UNITED STATES

VS.

NEW ORLEANS PACIFIC RY. CO.

and

RIVER LAND & LUMBER CO.

In this cause it is agreed that the answers to the subjoined direct and cross interrogatories of Edward B. Greene may be taken out of court in writing under oath by any officer qualified to administer an oath, and may be used in evidence on the part of the River Land & Lumber Company, defendant, in the trial of this cause.

Commission and all formality as to time and manner of taking the testimony are hereby waived and dispensed with.

Attorney for Complainant  
H. H. WHITE

Attorney for Defendant,  
River Land & Lumber Co.

#### DIRECT INTERROGATORIES.

1. What is your name, age, residence and occupation?
2. Examine the duplicate original of the deed from Charles L. Pack to Edward B. Greene, dated July 27th, 1909, filed July 5th, 1910, and recorded in Book 23, pg. 47, conveyance records of Vernon Parish, La., and

state if you are the Edward B. Greene, the vendee in said deed; said deed being attached to these interrogatories and marked "Exhibit C".

3. If you answer Yea to the above and foregoing interrogatory state whether or not you purchased same in good faith, whether or not you paid the consideration expressed in said deed, whether or not you had any notice of any defect in the title to the land therein described, if any such defect existed.
4. State under what circumstances you made the purchase of the land described in said deed, whether you absolutely paid the sum of money named in the deed, for the said land, and whether you expected to obtain a good and valid title to the said land under your said purchase price.
5. State whether or not at the time you purchased said land you had notice of any outstanding claims to the said land or any defects in said title, and whether or not you had any such notice down to the time of the delivery of the said deed to you and the payment of the consideration therein expressed.

105      District Court of the United States for  
                 the Western District of Louisiana.

UNITED STATES OF AMERICA

VS.

NEW ORLEANS PACIFIC RAILWAY COMPANY.

Edward B. Greene being duly sworn deposes and makes answer to the interrogatories expressed in the stipulation of the opposing attorneys in the above named case relative to the taking of the deposition of said Greene for use on the trial of said cause and as follows to-wit:—

## ANSWERS TO DIRECT INTERROGATORIES.

1. Name—Edward B. Greene, age—thirty-six, occupation—banker.
2. I am said Vendee.
3. I acted as trustee only in receiving and delivering the title to said lands, and at the request of the River Land and Lumber Company and without liability except as to my own acts. I knew nothing of any defects in title.
4. The consideration passed between my principals.
5. The scrutiny of titles was made by my principals. They declared title good.

## ANSWERS TO CROSS INTERROGATORIES.

1. The consideration passed direct from the River Land and Lumber Company to Charles L. Pack.
2. I am the Edward B. Greene and acted as trustee as announced hereinbefore.
3. As trustee I warranted only as against my own acts but subrogated my grantee in and to all rights and action of warranty against all former owners and vendors of the lands.
4. I never was a stockholder in, or director of, the New Orleans Pacific Railway Company.
5. I knew nothing of this.
6. No.
7. No.
8. I never had any examinations made
9. I made no inquiry.
10. I never was a stockholder in, or director of, the River Land and Lumber Company.

106 Sworn and subscribed to before me, R. T. Sawyer, a Notary Public in and for the County of Cuyahoga State of Ohio, on this 17th day of November, 1914, at the City of Cleveland, in said County and State.

Witness my official signature and seal and the signatures of said deponent Edward B. Greene and two subscribing witnesses all signing in the presence of each other at the time and place named above.

Witnesses

G. M. CUMMINGS,

L. E. OAKLEY

R. T. SAWYER

Notary Public

EDWARD B. GREENE

Deponent

(Seal).

107

KNOW AL LMEN BY THESE PRESENTS:—That CHARLES L. PACK of Lakewood, State of New Jersey, has granted, bargained, sold and conveyed and by these presents does grant, bargain, sell, transfer and deliver unto EDWARD B. GREENE, of Cleveland, State of Ohio, all of the following lands situated in the Parish of Vernon, State of Louisiana, to-wit:

TOWNSHIP TWO (2) NORTH, OF RANGE FIVE  
(5) WEST OF LOUISIANA PRINCIPAL MERIDIAN:

Southeast quarter of Section Two, Southwest quarter of northwest quarter; northwest quarter of southwest quarter, and south-half of southwest quarter of Section Three (3); southwest quarter of northeast quarter and northeast quarter of southeast quarter of section Four (4); southwest quarter of Northeast quarter, of Section Five (5); west half of Section Ten (10); North half of Northeast quarter of Section Twelve (12); southwest quarter of Section Twenty-two (22); north half of Northwest quarter of Section Thirty-three (33), Township Three North of Range



Five West, of Louisiana principal meridian; entire Section Sixteen (16); south half of south half of Section Twenty-one (21); southeast quarter of southeast quarter of Section Twenty-two (22); southwest quarter of southwest quarter of Section Twenty-three (23); southeast quarter of Northwest quarter and northeast quarter of southwest quarter of Section Twenty-four (24); northwest quarter of southwest quarter of Section Twenty-nine (29); south half of Section Thirty (30); north half of north east quarter of section thirty-one (31); southwest quarter of northeast quarter, southeast quarter of northwest quarter, east half of Southwest quarter, southwest quarter of southeast quarter and north half of southeast quarter of southeast quarter of Section Thirty-two (32); northeast quarter of southeast quarter and south half of southeast quarter of Section Thirty-three (33); southeast quarter of northeast quarter and southeast quarter of Section Thirty-four (34); northwest quarter northeast quarter, northeast quarter of northwest quarter and the west half of the west half of Section Thirty-five (35), Township Four (4) North, of Range Five (5) West of Louisiana Principal Meridian: North half of Northeast quarter and West half of Section Thirty-one (31). Township Two (2) North, of Range Six (6) West of Louisiana Principal Meridian West half of west half of Section Three (3); Northeast quarter of Southwest quarter of Section Five (5); Southwest quarter of Northwest quarter, North half of Southwest quarter and Southwest quarter of Southwest quarter, less Two (2) acres in Northeast corner thereof, of Section Six (6); Northeast quarter of Northwest quarter and Southeast quarter of Southwest quarter of Section Seven (7); Southwest quarter of Northeast quarter and Southeast quarter of Southeast quarter of Section Twelve (12); Northeast quarter of Northeast quarter of Section Twenty-nine (29); Southwest quarter of Northwest quarter and Northwest quarter of Southeast quarter of Section Thirty-two (32) East half of Northeast quarter, Northwest quarter of Southeast quarter and South-

east quarter of Southeast quarter of Section Thirty-three (33).

Township Three (3) North, of Range Six (6) West of Louisiana Principal Meridian; West half of Northwest quarter of Section Three (3); East half of Northeast quarter of Section Four (4); Northwest quarter of Northwest quarter of Northeast quarter, North half of Northeast quarter of Northwest quarter and Southwest quarter of Northeast quarter of Northwest quarter of Section Six (6); Southwest quarter of Southwest quarter of Section Ten (10); Entire Section Eleven (11); Southeast quarter of Northeast quarter less Six (6) acres on West Side; Northeast quarter of Southeast quarter, North half of Northeast quarter of Northwest quarter and Southwest quarter of Northeast quarter of Northwest quarter of Section Sixteen (16); North half of Northeast quarter of Section Twenty-five (25).

Township Four (4) North, of Range Six (6) West of Louisiana Principal Meridian; North half of Section, Northeast quarter of Southwest quarter, North half of Northwest quarter of Southwest quarter, Southeast quarter of Northwest quarter of Southwest quarter and Southeast quarter of Section Sixteen (16); South half of North half of Northwest quarter, South half of Southwest quarter of Northwest quarter and Southeast quarter of Northwest quarter of Section Twenty (20); South half of Northeast quarter, Southeast quarter of Northwest quarter and Northwest quarter of Southeast quarter of Section Twenty-five (25).

Township Two (2) North, of Range Seven (7) West of Louisiana Principal meridian: East half of Northeast quarter of Section Six (6); Southeast quarter of Southeast quarter of Section Eight (8); Northwest  
108 quarter of Northwest quarter of Section Twelve (12); West half of Section Thirteen (13); Northeast quarter of Southwest quarter and West half of Southeast quarter of Section Twenty-five (25); East half of Northeast quarter and Southeast quarter of Southeast quarter of Section Twenty-seven (27); West half of North-

east quarter, Southeast quarter of Northwest quarter and East half of Southwest quarter of Section Thirty-five (35); West half of Section Thirty-six (36).

Township Three (3) North, of Range Seven (7) West of Louisiana Principal Meridian: Northeast quarter, East half of Northwest quarter, Southwest quarter, North half of Southeast quarter and Southeast quarter of Southeast quarter of Section Six (6); South half of Section Nine (9); Northeast quarter of Northwest quarter of Section Ten (10); North half of Northeast quarter and Northeast quarter of Northwest quarter of Section Eighteen (18); Northeast quarter of Northeast quarter and South half of Northeast quarter of Section Thirty-four (34).

Township Four (4) North, of Range Seven (7) West of Louisiana Principal Meridian Northeast quarter and South half of Section Four (4); East half of Southeast quarter of Section Five (5); Northwest quarter of Section Seven (7); East half of Northeast quarter and South half of Northwest quarter of Section Eight (8); Southwest quarter of Northeast quarter and Northeast quarter of Northwest quarter of Section Fourteen (14); North half of Section Sixteen (16); North half of Northwest quarter of Section Eighteen (18); North half of North half of Section Twenty-two (22); East half of Southwest quarter of Northeast quarter, Southeast quarter of Northeast quarter, Northwest quarter of Northwest quarter less Seven and seventy-four hundredths (7.74) acres in Southeast corner, South half of Northwest quarter, Southwest quarter and Northwest quarter of Southeast quarter of Section Twenty-four (24); South half of Southwest quarter and Northwest quarter of Southeast quarter of Section Twenty-five (25); Northwest quarter of Northwest quarter and Southwest quarter of Southeast quarter of Section Twenty-six (26); South half of Northeast quarter, Northwest quarter, North half of Southwest quarter and Southwest quarter of Southwest quarter of Section Twenty-eight (28); North half of Northeast quarter, North half of Southeast quarter and Southwest quarter of Southeast quarter of Section Thirty-two (32).

Township Two (2) North, of Range Eight (8) West of Louisiana Principal Meridian: Southeast quarter of Southeast quarter of Section Nine (9); Northwest quarter, West half of Southwest quarter and Southeast quarter of Southeast quarter of Section Fifteen (15).

Township Three (3) North, of Range Eight (8) West of Louisiana Principal Meridian: Northwest quarter of Section Two (2); Southeast quarter of Northeast quarter and Northeast quarter of Southeast quarter of Section Seven (7); Southwest quarter of Southwest quarter of Section Nine (9); Southwest quarter of Northwest quarter and Southeast quarter of Southeast quarter of Section Fourteen (14); Northeast quarter of Northeast quarter and Southeast quarter of Southeast quarter of Section Nineteen (19); Northwest quarter of Section Twenty-four (24); West half of Northeast quarter of Section Twenty-nine (29); West half of Section Thirty Six (36).

Township Four (4) North of Range Eight (8) West of Louisiana Principal Meridian: Northwest quarter of Northwest quarter and Southeast quarter of Northwest quarter of Section Four (4); Northeast quarter of Northwest quarter of Section Seven (7); North half and Southwest quarter of Section Sixteen (16); South half of Southeast quarter of Section Twenty-one (21); East half of Southwest quarter, Northeast quarter of Southeast quarter and South half of Southeast quarter of Section Twenty-two (22); Southwest quarter of Northeast quarter of Southeast quarter of Northwest quarter of Section Twenty-three (23); North half of Northwest quarter of Section Twenty-four (24); Northwest quarter of Northeast quarter, Northwest quarter and North half of Southwest quarter of Section Twenty-seven (27); Southeast quarter of Northeast quarter and South half of Southeast quarter of Section Twenty-eight (28); Northwest quarter of Northeast quarter, Northeast quarter, of Northwest quarter and Southwest quarter of Southeast quarter of Section Thirty-three (33); Southwest quarter of Northeast quarter and Northeast quarter of Southeast quarter of Section Thirty-four (34); South half of Northwest quarter of Section Thirty-

six (36). Twonship Four (4) North, of Range six (6) West of Louisiana Principal Meridian: All the pine timber on the North half of Southwest quarter of Northwest quarter of Section twenty (20), with same right of way to remove this timber that was granted in a deed from Frank D. Jackson, Grantor to George R. Nicholson and expressed in said deed thus: "with full right of way to remove said timber at any time within fifty (50) years from and after June Second Nineteen hundred and six, and right of way to remove and cross said last described land in the operation of cutting or logging any other timber owned by George R. Nicholson, his heirs and assigns."

The said lands contain Fourteen thousand four hundred thirty-nine and thirty-four hundredths (14,439.34) acres, more or less, according to the United States survey thereof.

TO HAVE AND TO HOLD the above described premises together with, all and singular, the rights and appurtenances thereunto in anywise belonging unto the said Edward B. Greene his heirs and assigns, forever, and the said Charles L. Pack does hereby bind himself and his heirs, executors and administrators to warrant and forever defend all and singular, the said premises and the title thereto unto the said Edward B. Greene, his heirs and assigns, against the claim of all persons whomsoever lawfully claiming or to claim the said lands or any part thereof, and hereby subrogating Edward B. Greene in and to all the rights of warranty of said Charles L. Pack; Provided the liability of warranty of said Charles L. Pack, or his heirs, in the transfer of the title to the lands herein conveyed or any part thereof, shall not exceed the pro rata amount per acre of the purchase price herein named, and in this connection it is conceded by the vendee that in this sale and transfer the value upon which the consideration of purchase is based lies in the pine timber which may be situate on said lands.

This sale is made for the consideration and sum of Two hundred and one thousand (\$201,000.00) Dollars, the

receipt whereof is hereby acknowledged. The said Edward B. Greene hereby accepts for himself, his heirs and assigns, this sale, transfer and delivery of the lands hereinbefore described and consents to the provisions and conditions as set forth in this instrument.

IN WITNESS WHEREOF the said Charles L. Pack has signed his name and affixes his seal hereto at Cleveland, State of Ohio in the presence of Arthur Pack and W. E. Crittenden competent male witnesses, on this day of \_\_\_\_\_ in the year of our Lord Nineteen hundred and nine and

IN WITNESS WHEREOF the said Edward B. Greene has signed his name and affixed his seal hereto at Cleveland, State of Ohio, in the presence of Edward L. Worthington and E. S. Curtiss competent male witnesses on this twenty-seventh day of July in the year of our Lord Nineteen hundred and nine.

CHARLES L. PACK.  
EDWARD B. GREENE.

Witnesses:—

As to Charles L. Pack  
ARTHUR PACK  
W. E. CRITTENDEN

As to Edward B. Greene  
EDWARD L. WORTHINGTON  
E. S. CURTISS.

State of Ohio                    }  
County of Cuyahoga        } ss.

Before me, R. K. Gowanlock, a duly qualified Notary Public in for the State and County aforesaid, and in the presence of Arthur Pack, and W. E. Crittenden competent male witnesses, on this 27th day of July A. D. 1909, personally appeared Charles L. Pack, to me known and known to me to be the person described in and who signed and executed the foregoing instrument conveying 14,439.24 acres of land, more or less, in Vernon Parish, Louisiana, to Edward B. Greene and who acknowledged before me, in the



presence of said witnesses, that he executed the same as his free act and deed and for the uses and purposes therein expressed.

Witness my official signature and seal of office on the date above written, said witnesses signing with me, Notary.

Witnesses:

ARTHUR PACK  
W. E. CRITTENDEN.

R. K. GOWANLOCK  
Notary Public.

110 State of Ohio }  
County of Cuyahoga } ss.

Before me, R. K. Gowanlock, a duly qualified Notary Public, in and for the State and County aforesaid and in the presence of Edward L. Worthington and E. S. Curtiss competent male witnesses, on this twenty-seventh day of July A. D. 1909, personally appeared Edward B. Greene, to me known and known to me to be the person described in and who signed and executed the foregoing instrument conveying 14,439.24 acres of land, more or less, in Vernon Parish, Louisiana, and who acknowledged before me in the presence of said witnesses that he executed the same as his free act and deed, and for the uses and purposes therein expressed. Witness my official signature and seal of office on the day above written said witnesses signing with me, Notary.

Witnesses

(Seal)

EDWARD L. WORTHINGTON  
E. S. CURTISS.

R. K. GOWANLOCK  
Notary Public.

COMPARED WITH ORIGINAL.

ATTEST: A TRUE COPY OF THE ORIGINAL

CHARLES B. FORHEE,

Deputy Clerk and Recorder

Vernon Parish, Louisiana.

(Seal)



(ENDORSED) Deed. Charles L. Pack to Edward B. Greene, 14439.34/100 acres Vernon Parish, Louisiana, July 27, 1909. No. 662 filed 5 day of July 1910 and recorded 5 day of July 1910 in Vol 23 Page 47 Conveyance record Vernon Parish. Compared with original. No. 622 Filed 5 day of July 1910, and recorded 5 day of July, 1910, in vol 23, page 47 Conveyance record Vernon Parish. A. G. Winfree, Clerk By W. Thompson, Deputy.

ENDORSED: No. 884. In Eq. U. S. District Court, West Dist. of Louisiana. United States of America vs N. O. Pacific Ry. Co. and River Land & Lumber Co. DEPOSITION OF EDWARD B. GREENE. Taken Nov. 17, 1914 before R. T. Sawyer Not. Pub. at Cleveland, O. Filed Nov. 21, 1914, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

111 DEPOSITION OF GEO. R. NICHOLSON.

United States District Court  
Western District of Louisiana.

Number 884 In Equity

UNITED STATES

vs.

NEW ORLEANS PACIFIC RY. CO.

and

RIVER LAND & LUMBER CO.

In this cause it is agreed that the answers to the subjoined direct and cross interrogatories of George R. Nicholson may be taken out of court in writing under oath by any officer qualified to administer an oath, and may be used in evidence on the part of the River Land & Lumber Company, defendant, in the trial of this cause.

Commission and all formality as to time and manner

of taking the testimony are hereby waived and dispensed with.

Attorney for Complainant.

H. H. WHITE

Attorney for Defendant,  
The River Land & Lumber Co.

### DIRECT INTERROGATORIES.

1. What is your name, age, residence and occupation
2. Examine the certified copy of the deed from Charles L. Pack to George R. Nicholson, of date November 24th, 1903, filed February 26, 1904, recorded Book 3, p. 509 of the Conveyances of Vernon Parish, Louisiana, and state if you are the George R. Nicholson, the vendee in said deed; said deed being attached to these interrogatories and marked "Exhibit B".
3. If you answer Yea to the above and foregoing interrogatory state whether or not you purchased same in good faith, whether or not you paid the consideration expressed in said deed, whether or not you had any notice of any defect in the title to the land therein described, if any such defect existed.
4. State under what circumstances you made the purchase of the land described in said deed, whether you absolutely paid the sum of money named in the deed for the said land, and whether you expected to obtain a good and valid title to the said land under your said purchase price.
5. State whether or not at the time you purchased said lands you had notice of any outstanding claims to the said land or any defects in said title, and whether or not you had any such notice down to the time of the delivery of the said deed to you and the payment of the consideration therein expressed.

112 In the District Court of the United States  
For the Western District of Louisiana.

No. 884 In Equity.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY

and

RIVER LAND & LUMBER COMPANY.

CROSS INTERROGATORIES.

Cross-interrogatories to be propounded to George R. Nicholson.

1. Please refer to the deed from Charles L. Pack to yourself, attached to the direct interrogatories, and referred to in direct interrogatory #2, which deed recites a consideration of \$11,353.17, and state when, where, in what manner, and to whom said consideration was paid.

2. Please state from whom you purchased the lands described in the deed from yourself, to Charles L. Pack hereto attached; what price you paid for same, and when, where, to whom, and in what manner the said price was paid.

3. Please state whether or not you were, at the time of your purchase of said lands, a stock-holder in, or a director of, the New Orleans Pacific Railway Company; and if so, how long you had been such stock-holder or director.

4. At the time of your purchase of said lands and the payment of the purchase price thereof, did you not know that the said lands had been patented by the United States to the New Orleans Pacific Railway Company under the provisions of the Land Grant Act of Congress, approved March 3, 1871, and that that portion of said land which was occupied by an actual bona fide settler at the time of the definite location of the line or road of the New Orleans Pacific Railway Company, was, by the second Section of

Act of Congress approved February 8, 1887, expressly excepted from said grant?

5. At the time of your purchase of said lands and the payment of the price thereof, were you not aware of the fact that a large portion of the lands patented by the

United States to the New Orleans Pacific Railway  
113 Company was then occupied by actual settlers?

Did you not know, at the time of the delivery of your deed to said land, and of the payment of said price, that a portion of the land described in your deed was in the possession of actual settlers who claimed the right to enter the same under the homestead laws of the United States?

6. At the time of the delivery of your deed, and of the payment of the price thereof, did you not know that the land in controversy in this suit, namely, the Northeast Quarter of the Northwest Quarter, Section 33, Township 22 North, of Range 5 West, was in the possession of Insley Hughes an Actual settler who claimed the right to enter the same under the homestead laws of the United States, and that the said land had been continuously occupied and cultivated by him from 1880 up to the time of your purchase?

7. Did you, or your agents or other representatives, examine the land described in the preceding interrogatory with a view of ascertaining whether or not the said land was or was not occupied by an actual settler prior to, or at the time of, your purchase?

8. State whether or not you knew, directly or indirectly, at the time of your purchase that the said land described in the 6th interrogatory was occupied and claimed by the said Insley Hughes?

9. Is it not a fact that you purchased large tracts of land in the State of Louisiana which had been patented by the United States to the New Orleans Pacific, and that you or your agents went upon, and examined, all of said lands before purchasing same?

10. State whether or not the timber on the land in controversy in this case described in the 6th cross-interrogatory was estimated by you or your agents prior to your purchase thereof?

11. State whether or not there was any agreement, at the time of your acquisition of the land in controversy in this case, between yourself and Charles L. Pack by which you were to convey an interest in said lands to the said Charles L. Pack?

12. Please state whether or not you were at any time, and if so, when a stock-holder in, or director of the River Land & Lumber Company the defendant in this case.

114 District Court of the United States for the Western District of Louisiana.

United States of America	}	District Court of the United States for the Western District of Lou- isiana.
vs.		
New Orleans Pacific Railway Company		
and		
The River Land and Lumber Company.		

Answering the interrogatories that appear in the stipulation hereto attached and signed by the Attornies in above cause relative to taking the testimony of George R. Nicholson out of Court, said George R. Nicholson, deponent hereby affirms to-wit:

Answers to direct interrogatories.

1. My name is George R. Nicholson, age over fifty years, occupation lumberman.

2. I am the George R. Nicholson, vendee, named in said deed from Charles L. Pack, dated November 24th, 1903, recorded in Book 3 page 509 of the Conveyances of Vernon Parish, State of Louisiana, "Exhibit B" being a copy of said deed.

3. The lands described in the foregoing described deed were purchased by me from various persons in behalf

of Charles L. Pack and myself each owning an undivided interest, and the titles were largely taken in my name, some taken in name of Charles L. Pack but all eventually placed in name of Charles L. Pack who later conveyed my one-fourth interest to me as evidenced by the above described deed of November 24th, 1903, These lands were purchased in good faith and cash paid therefore and the consideration named in the said deed marked Exhibit B vance of money made by him and used in the purchase of these lands. I personally investigated all these lands I purchased for our joint ownership—titles were abstracted by Abstract Companies or by the Clerk of Court and Recorder of the respective Parishes in Louisiana where we bought land. These Abstracts of Title were closely scrutinized by myself assisted by an attorney and I refused to purchase any land where we discovered title thereof not perfect or encumbered by any claims, liens or squatters and we had no notice or knowledge of any defect in these titles.

115 4. I purchased said lands in the ordinary course of barter and sale as I was engaged in buying and selling lands—I paid cash for all land purchases and expected to receive good and valid title and had no doubts on that point in accepting deeds of transfer.

5. At the time I purchased said lands I had no notice of any adverse claims to our title nor thereafter while I was an owner.

#### ANSWERS TO CROSS INTERROGATORIES.

1. The consideration was paid at the time of the delivery of the deed to me and paid at the office of Charles L. Pack in Cleveland, Ohio, and paid to Charles L. Pack.

2. There is no deed attached to said interrogatories made by myself to Charles L. Pack, but there are deeds existing from myself to said Charles L. Pack of lands that I bought from various persons who owned small tracts, and I paid the going or market price at date of purchase vary-

ing in amount according to the location and amount of timber and paid cash for same.

3. I never was a stockholder in or a director of, the New Orleans Pacific Railway Company.

4. Some of the lands I bought were lands that the title originated in a Patent to the New Orleans Pacific Railway Company and all I knew of the provisions of the grant was that a certain "Suit 16" involved a few pieces of the granted lands.

5. At the time I purchased these lands there were no occupants or adverse claimants to any of the land I bought, and none of it was in actual possession of any person. This fact together with the fact that the United States had issued a patent therefor to the New Orleans Pacific Railway Company seemed conclusive to me.

6. At the time of the delivery of my deed the Northeast quarter of the Northwest quarter of Section 33 Township 2 North of Range 5 West of Louisiana Meridian in Louisiana was not in possession of Insley Hughes or any other person and the land never was cultivated by any person, and I knew nothing of any person having a claim or considering having any claim thereon. The records showed clear title in my vendor.

7. Yes.

8. I did not know directly or indirectly of any such claim.

9. I did not purchase any large tracts of lands which had been patented to the New Orleans Pacific  
116 Railway. We examined all lands before purchasing same.

10. By both self and a timber man who usually went with me.

11. Yes. I bought these lands in behalf of Charles L. Pack and myself—undivided interests. For expediency most of the titles were taken in my name, but the deed for Northeast quarter of Northwest quarter of Section Thirty-



three Township Two North of Range Five West of Louisiana Meridian in Louisiana, with other lands was executed in Cleveland during my presence in Louisiana and was taken in name of Charles L. Pack for expediency.

12. I never was a stockholder or a director of the River Land and Lumber Company.

GEO. R. NICHOLSON.

George R. Nicholson personally appearing before me, Leroy B. Gulotta, Clerk, U. S. Dist. Court, Western Dist. of La., and being by me this day duly sworn declared to me that the above and foregoing answers made by him to the interrogatories in the cause of the United States vs. New Orleans Pacific Railway Company and River Land and Lumber Company to be used as testimony in the trial of said cause are the truth to the best of his knowledge.

Witness my signature and official seal and the signature of said deponent signing with me, at the City of Shreveport, La., on this 1st day of February, A. D. 1915.

(Seal)

LEROY B. GULOTTA,  
Clerk U. S. District Court,  
Western Dist. of La.

Filed Feb. 2, 1915 Leroy B. Gulotta, Clerk U. S. District Court, West Dist. of Louisiana.

117

In the  
District Court of the United States for  
the Western District of Louisiana.

No. 884 In Equity.

UNITED STATES OF AMERICA,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY

and

THE RIVER LAND & LUMBER COMPANY.

In this cause it is agreed that the deposition of George R. Nicholson be taken out of Court, in writing, under oath,

by any officer qualified to administer an oath and having a seal.

Commission, and all formality as to time of taking testimony are waived, but right is reserved to object to any testimony or evidence on the same grounds that might be urged were it given in open court.

GEO. WHITFIELD JACK  
(United States Attorney)  
Attorney for Plaintiff

H. H. WHITE  
Atty for defendant, River Land & Lumber Co.

Filed Feb. 2, 1915, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

118      State of Ohio  
            City of Cleveland  
            County of Cuyahoga      }

KNOW ALL MEN BY THESE PRESENTS, That I, Charles L. Pack, a married man, of the City of Cleveland, State of Ohio, in consideration of Eleven thousand three hundred fifty-three and seventeen hundredths (\$11,353.17) dollars, the receipt whereof is hereby acknowledged, to me in hand paid by George R. Nicholson, of the City of Cleveland, State of Ohio, do hereby Sell, transfer and Convey, and forever Quitclaim unto said George R. Nicholson an undivided one-fourth interest in and to all these certain pieces or parcels of land situated and being in the Parish of Rapides, Natchitoches and Vernon, in the State of Louisiana, and described as follows to-wit:—

ALL NORTH OF BASE LINE AND WEST OF  
LOUISIANA PRINCIPAL MERIDIAN  
PARISH OF RAPIDES

In Township Two (2) Range Four (4) :

Northwest quarter of Southeast quarter and Southeast quarter of Southeast quarter of Section Five (5); and Northwest quarter of Northwest Quarter and Southeast quarter of Northwest quarter of Section Nine (9).

### PARISH OF NATCHITOCHES.

In Township Five (5) Range Six (6) :

Southeast quarter of Southwest quarter of Section Twenty (20) ; and Northwest quarter of Northwest quarter of Section Thirty-four (34).

In Township Five (5) Range seven (7) :

West half of Southwest quarter of Section Twenty (20) ; Northwest quarter of Northwest quarter of Section Twenty-nine (29) ; East half of Southwest quarter and Southeast quarter of Section Thirty (30) ; Northeast quarter of Northeast quarter, Southwest quarter of Northeast quarter and North half of Northwest quarter of Section Thirty-two (32) ; Southwest quarter of Northwest quarter, Southeast quarter of Southwest quarter and Southwest quarter of Southeast quarter of Section Thirty-three (33) ; and East half of Northwest quarter and Southwest quarter of Section Thirty-four (34).

### PARISH OF VERNON.

In Township Two (2) Range Five (5) :

Southwest quarter of Northwest quarter, Northwest quarter of Southwest quarter and South half of Southwest quarter of Section Three (3) ; Southwest quarter of Northeast quarter and Northeast quarter of Southeast quarter of Section Four (4) ; Southwest quarter of Northeast quarter of Section Five (5) ; North half of Northeast quarter of Section Twelve (12) ; Southwest quarter of Section Twenty-two (22) ; and North half of Northwest quarter of Section Thirty-three (33).

In Township Three (3) Range Five (5) :

Entire Section Sixteen (16) ; Southeast quarter of Northwest quarter and Northeast quarter of Southwest quarter of Section Twenty-four (24) ; Northwest quarter of Southwest quarter of Section Twenty-nine (29) ; South half of Section Thirty (30) ; North half of Northeast quarter of Section Thirty-one (21) ; Southwest quarter of Northeast quarter, Southeast quarter of Northwest quarter, East half of Southwest quarter, Southwest quarter of Southeast quar-

ter and North half of Southeast quarter of Southeast quarter of Section Thirty-two (32); Northeast quarter of Southeast quarter and South half of Southeast quarter of Section Thirty-three (33); Southeast quarter of Northeast quarter and Southeast quarter of Section Thirty-four (34); and North half of Northwest quarter, Southwest quarter of Northwest quarter and West half of Southwest quarter of Section Thirty-five (35).

In Township Four (4) Range Five (5):

North half of Northeast quarter and Northwest quarter of Section Thirty-one (31).

In Township Two (2) Range Six (6):

West half of West half of Section Three (3); Northeast quarter of Southwest quarter of Section Five (5); Southwest quarter of Northwest quarter, West half of Southwest quarter, less two (2) acres in the Southeast corner, and Northeast quarter of Southwest quarter of Section Six (6); Northeast quarter of Northwest quarter and Southeast quarter of Southwest quarter of Section Seven (7); Southwest quarter of Northeast quarter and Southeast quarter of Southeast quarter of Section Twelve (12); Northeast quarter of Northeast quarter of Section Twenty-nine (29); Southwest quarter of Northwest quarter and Northwest quarter of Southeast quarter of Section Thirty-two (32); and East half of Northeast quarter, Northwest quarter of Southeast quarter and Southeast quarter of Southeast quarter of Section Thirty-three (33)

119

In Township Three (3) Range Six (6):

East half of Northeast quarter of Section Four (4); and Southeast quarter of Northeast quarter and Northeast quarter of Southeast quarter of Section Sixteen (16).

In Township Four (4) Range Six (6):

North half of Section, Northeast quarter of Southwest quarter, North half of Northwest quarter of Southwest quarter, Southeast quarter of Northwest quarter of Southwest quarter and Southeast quarter of Section Sixteen (16)

In Township Two (2) Range Seven (7) :

East half of Northeast quarter of Section Six (6) ; Southeast quarter of Southeast of Section Eight (8) ; Northwest quarter of Northwest quarter of Section Twelve (12) West half of Section Thirteen (13) ; northeast quarter of Southwest quarter and West half of Southeast quarter of Section Twenty-five (25) ; East half of Northeast quarter, and Southeast quarter of Southeast quarter of Section Twenty-seven (27) ; West half of Northeast quarter, Southeast quarter of Northwest quarter and East half of Southwest quarter of Section Thirty-five (35) ; and West half of Section Thirty-six (36).

In Township Three (3) Range Seven (7) :

Northeast quarter of Section, East half of Northwest quarter, Southwest quarter of Section, North half of Southeast quarter and Southeast quarter of Southeast quarter of Section Six (6) ; South half of Section Nine (9) Northeast quarter of Northwest quarter of Section Ten (10) ; North half of Northeast quarter and Northeast quarter of Northwest quarter of Section Eighteen (18) ; and Northeast quarter of Northeast quarter and South half of Northeast quarter of Section Thirty-four (34).

In Township Four (4) Range Seven (7) :

Northeast quarter of Section and South half of Section Four (4) ; East half of Southeast quarter of Section Five (5) ; Northwest quarter of Section Seven (7) ; East half of Northeast quarter and South half of Northwest quarter of Section Eight (8) ; Southwest quarter of Northeast quarter and Northeast quarter of Northwest quarter of Section Fourteen (14) ; North half of Section Sixteen (16) ; North half of Northwest quarter of Section Eighteen (18) ; North half of North half of Section Twenty-two (22) ; Northwest quarter of Northwest quarter, less seven and seventy-four hundredths (7.74) acres lying in the Southeast corner thereof and which was reserved by C. Columbus Joyce in his deed dated March eighth, nineteen hundred and one, said deed recorded in Deed Book "S" on pages 403 to 405 of Vernon Parish Records, and South half of

Northwest quarter and Southwest quarter of Section Twenty-four (24) ; South half of Southwest quarter and Northwest quarter of Southeast quarter of Section Twenty-five (25) ; Northwest quarter of Northwest quarter and Southwest quarter of Southeast quarter of Section Twenty-six (26) ; South half of Northeast quarter, Northwest quarter of Section, North half of Southwest quarter and Southwest quarter of Southwest quarter of Section Twenty-eight (28) ; and North half of Northeast quarter, North half of Southeast quarter and Southwest quarter of Southeast quarter of Section Thirty-two (32).

In Township Two (2) Range Eight (8) :

Southeast quarter of Southeast quarter of Section Nine (9) ; and Northwest quarter of Section, West half of Southwest quarter and Southeast quarter of Southeast quarter of Section Fifteen (15).

In Township Three (3) Range Eight (8)

Southeast quarter of Northeast quarter and Northeast quarter of Southeast quarter of Section Seven (7) ; Southwest quarter of Southwest quarter of Section Nine (9) ; Southwest quarter of Northwest quarter and Southeast quarter of Southeast quarter of Section Fourteen (14) ; Northeast quarter of Northeast quarter and Southeast quarter of Southeast quarter of Section Nineteen (19) ; West half of Northeast quarter of Section Twenty-nine (29) ; and West half of Section Thirty-six (36).

In Township Four (4) Range Eight (8) :

Northwest quarter of Northwest quarter and Southeast quarter of Northwest quarter of Section Four (4) ; Northeast quarter of Northwest quarter of Section Seven (7) ; Northeast quarter of Section and west half of Section Sixteen (16) ; South half of Southeast quarter of Section Twenty-one (21) ; East half of Southwest quarter, Northeast quarter of Southeast quarter and South half of Southeast quarter of Section Twenty-two (22) ; Southwest quarter of Northeast quarter and Southeast quarter of Northwest quarter of Section Twenty-three (23) ; North  
120 half of Northwest quarter of Section Twenty-four (24) ; Northwest quarter of Northeast quarter,

Northwest quarter of Section and North half of Southwest quarter of Section Twenty-seven (27) ; Southeast quarter of Northeast quarter and South half of Southeast quarter of Section Twenty-eight (23) ; Northwest quarter of Northeast quarter, Northeast quarter of Northwest quarter and Southwest quarter of Northeast quarter and Northeast quarter of Southeast quarter of Section Thirty-four (34) ; and South half of Northwest quarter of Section Thirty-six (36).

The undivided one-fourth interest hereby conveyed in said described lands aggregates three thousand two hundred fifty-three and fifty-seven hundredths (3,253.57) acres, more or less, according to the United States survey thereof.

TO HAVE AND TO HOLD the undivided one-fourth interest in and to said described lands, with all and singular, the appurtenances thereto in any wise belonging, unto the said George R. Nicholson, his heirs and assigns, forever, and the said vendor does hereby subrogate the said purchaser in and to a participation of, in and to all his rights and actions of warranty against all former owners and vendors of the said premises.

This sale is made by said vendor without warranty except as against his own acts and without recourse on him for restitution of price, or otherwise.

The said George R. Nicholson signs and executes this instrument to acknowledge delivery thereof and to accept for himself, his heirs and assigns, all and singular, the premises hereby conveyed.

WITNESS the signatures of said Charles L. Pack, vendor, and said George R. Nicholson, vendee, at the City of Cleveland, State of Ohio, in presence of Alfred G. Tame and Frank E. Williams, competent male witnesses, and the undersigned Notary, on this Twenty-fourth day of November, A. D., nineteen hundred and three.

CHARLES L. PACK  
GEORGE R. NICHOLSON

Witnesses:

ALFRED G. TAME  
FRANK E. WILLIAMS.



State of Ohio }  
 County of Cuyahoga }

Before me, R. K. Gowanlock, a duly qualified Notary Public in and for the County and State aforesaid, personally appeared Charles L. Pack and George R. Nicholson, personally known to me to be the identical persons described in and who executed the foregoing instrument, who, being each duly sworn, acknowledged to me in the presence of Alfred G. Tame and Frank E. Williams, competent male witnesses, that they signed and executed the same on the day of the date thereof and for the uses and purposes therein expressed.

WITNESS my official signature and seal and the signatures of said witnesses who sign with me, this twenty fourth day of November, A. D. nineteen hundred and three.

R. K. GOWANLOCK,  
 Notary Public.

Witnesses:

ALFRED G. TAME  
 FRANK E. WILLIAMS

State of Louisiana }  
 Parish of Rapides }

Clerk of Court Office

I hereby certify that the within and foregoing act of sale was filed for record in my office the 7 day of March, A. D., nineteen hundred and Four, at 10:30 o'clock A. M. and was duly recorded on the 26 day of March, A. D., nineteen hundred and Four in conveyance record No "PP" on page 26 et seq.

Witness my official signature and seal this — day of —, A. D., nineteen hundred and —

(Seal)

E. CUSHMAN  
 Dy. Clerk and Ex-Officio Recorder.

121      State of Louisiana      } Clerk of Courts Office.  
           Parish of Natchitoches }

I hereby certify that the within and foregoing act of sale was filed for record in my office the 2nd day of February A. D. nineteen hundred and four, at 9 o'clock A. M. and was duly recorded on the 3rd day of February A. D. nineteen hundred and four in conveyance records No. 112 on page 412.

Witness my official signature and seal this 2nd day of February A. D., nineteen hundred and Four.

F. M. LANZEN

(Seal)

Clerk and Ex-officio Recorder

State of Louisiana      } Clerk of Courts Office.  
           Parish of Vernon }

I hereby certify that the within and foregoing act of sale was filed for record in my office the 26 day of February, A. D. nineteen hundred and Four, at 2 o'clock p. m. and was duly recorded on the 29 day of February, A. D. nineteen hundred and Four in conveyance record No. "3" on page 509.

Witness my official signature and seal this 29 day of February A. D., nineteen hundred and four.

W. R. MOORE

(Seal)

Clerk and Ex-officio Recorder.

Compared with original.

Attest:

A true copy of the original

CHARLES B. FOUHEE

Deputy Clerk and Recorder

(Seal)

Vernon Parish, Louisiana.

(Endorsed: COPY OF DEED. Charles L. Pack to Geo. R. Nicholson.

Natchitoches Parish,

Vernon      "

Rapides      "

1/4 interest.

ENDORSED: No. 884, U. S. Dist. Court, West Dist. of La. United States vs N. O. Pac. Ry. Co. and River Land & Lumber Co. TESTIMONY OF GEO. R. NICHOLSON and DEED FROM CHAS. L. PACK TO GEO. R. NICHOLSON. DEFENDANTS EVIDENCE. Filed Feb. 2, 1915, Leroy B. Gulotta, Clerk U. S. District Court, West Dist. of Louisiana.

122 In the District Court of the United States  
for the Western District of Louisiana.

No. 961, In Equity.

UNITED STATES OF AMERICA,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY,  
W. R. PICKERING LUMBER COMPANY,  
and  
RIVER LAND & LUMBER COMPANY.

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### INDEX TO TESTIMONY.

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	PAGE
GOVERNMENT'S EXHIBITS LISTED.....	A
DEFENDANTS' EXHIBITS LISTED.....	B
GOVERNMENT'S OFFERINGS .....	1
GOVERNMENT'S TESTIMONY:	
MRS. JOSEPHINE BROWN.....	3
Cross-examination .....	7
Re-direct examination .....	8
Re-cross examination .....	9
Recalled to stand by Government.....	18
Recalled to stand by Government.....	25
J. H. HAGAN.....	9
Cross-examination .....	11

	PAGE
H. H. HAGAN.....	12
Cross-examination .....	13
Re-direct examination .....	13
A. C. KIRKPATRICK .....	14
J. C. SMITH.....	16
Cross-examination .....	18

#### DEFENDANTS' TESTIMONY:

R. E. McKNIGHT.....	19
Cross-examination .....	19
Re-direct examination .....	21
Tracing offered in evidence Deft's 1.....	21
Re-cross examination .....	22
Re-direct examination .....	22
T. B. STEVENS.....	22
Cross-examination .....	24
ELZIE STOKES .....	24
Cross examination .....	25
Re-direct examination .....	25

(CONTINUED)

#### 123 CASE RE-OPENED AT ALEXANDRIA, LOUISIANA, ON LATER DATE.

#### DEFENDANTS' TESTIMONY CONTINUED:

ELZIE STOKES .....	26
Cross examination .....	27
Re-direct examination .....	27
Re-cross examination .....	27
Re-direct examination .....	28
TOM STEVENS .....	28
Cross-examination .....	29

124 In the District Court of the United States  
for the Western District of Louisiana.

No. 961, In Equity.

UNITED STATES OF AMERICA,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY,  
W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND & LUMBER COMPANY.

Evidence taken at Shreveport, Louisiana, April 29,  
1915, out of court by consent.

Appearances for the Government:

Geo. Whitfield Jack, United States Attorney,  
Robert A. Hunter, Asst. United States Attorney.

Appearances for defendants:

Fred G. Hudson, for New Orleans Pacific Ry. Co.  
H. H. White, for River Land & Lumber Company.  
Judge J. G. Palmer, for W. R. Pickering Lbr. Co.

Appearance for intervenor:

S. M. Atkinson, for Mrs. Josephine Brown.

The evidence being taken out of court, is taken subject to objection of all parties which may be offered to the materiality or relevancy of the evidence.

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Mr. Jack, for the Government, offers, introduces and asks to be filed in evidence: resolution adopted at a meeting of the stockholders of the New Orleans Pacific Railway Company accepting the provisions of the Act of Congress of February 8, 1887, which resolution is filed by reference, and it is agreed that the same may be copied by the Clerk of Court from the printed report of the hearings before the Committee on Public lands in the House of Representatives on H. R. 5890 of date January 26 and 27, 1914. Said resolution appearing on pages 28 and 29 of said hearing.

Government's Ex. A-1.

125

**OBJECTION:** This is objected to by counsel for defendants W. R. Pickering Lumber Company in so far as it affects the southwest quarter of northeast quarter, Section 13, Township 2 North, Range 7 North, for the reason that the patent to said land was issued on March 3, 1885, prior to such action on the part of the said New Orleans Pacific Railway Company.

Counsel for the Government offers, introduces and files in evidence: agreement of the New Orleans Pacific Railway Company to reconvey lands, dated August 3, 1892, and it is agreed that the Clerk of court may copy said agreement from page 30 of the printed record of said hearing above referred to.

Government's Ex. "B."

**OBJECTION:** This is objected to by both defendants on the ground that the said resolution would have no retroactive effect, it having been adopted long after the New Orleans Pacific Railway Company sold the lands in question.

Counsel for the Government offers, introduces and files in evidence: copy of the Land Office Record relating to the homestead entry and contest between Jasper J. Brown and the New Orleans Pacific Railway Company

Government's Exhibit "C."

Counsel for the Government offers, introduces and files in evidence: bill of the Government and exhibits thereto attached in suit of the United States versus New Orleans Pacific Railway Company et als No. 16 in Equity on the docket of this court, subpoena to the New Orleans Pacific Railway Company, and all pleadings filed in said suit by the New Orleans Pacific Railway Company and decrees of the court

thereon, as follows: Government's Ex. D-1 et seq:

126

D-1. Bill in Equity filed February 27, 1901.

Including order for appearance of non-resident defendants, and list of lands patent to which the Government asked the cancellation in so far as it covers the lands in controversy, in this suit (No. 961).

D-2. Subpœna in Chancery, of date February 27, 1901, to Robert Strong, Vice-President, and Charles M. Greene, Receiver, with return thereon showing service February 28, 1901.

D-3. Certified copy of appearance of Charles M. Greene, Receiver of the New Orleans Pacific Railway Company. Filed March 28, 1901.

D-4. Minutes of May 25, 1903, showing order for supplemental process.

D-5. Order of Court and return of service on Charles M. Greene. Filed June 30, 1903.

D-6. Certified copy of Order of Court issued to Robert Strong and return of service. Filed June 30, 1903.

D-7. Copy of Motion to vacate and annul process issued. Filed September 25, 1903.

D-8. Copy of original order of court to appear and answer. Filed May 25, 1904.

D-9. Copy of Order of Court issued to Robert Strong, and Marshal's return. Filed June 8, 1904.

D-10. Order of Court issued to Charles M. Greene, and Marshal's return. Filed June 21, 1904.

D-11. Appearance of New Orleans Pacific Railway Company et als of June 26, 1904.

D-12. Demurrer of New Orleans Pacific Railway Company of August 26, 1904.

D-13. Amended demurrer of New Orleans Pacific Railway Company. Filed October 24, 1904.

127

D-14. Decree overruling demurrer and sustaining Bill of Complaint and assigning defendants to answer. Filed March 17, 1905.

D-15. Pleas of New Orleans Pacific Railway Company. Filed May 22, 1905.



D-16. Replication to plea of New Orleans Pacific Railway Company. Filed February 18, 1906.

D-17. Motion to strike out plea of prescription.

D-18. Minutes of Court of November 6, 1913, showing reference of plea to merits.

D-19. Answer of New Orleans Pacific Railway Company. Filed December 16, 1913.

OBJECTION: Counsel for defendants W. R. Pickering Lumber Company and River Land & Lumber Company object to the introduction in evidence of these papers from the record of Equity Suit No. 16 as immaterial, incompetent and irrelevant, in this, to-wit:

(1) That the said documents have no tendency to prove any fact alleged in any of the pleadings filed herein.

(2) That they have no tendency to show any right in any of the parties;

(3) That they, as to the defendants W. R. Pickering Lumber Company and River Land & Lumber Company, are res inter alias acta. The said two defendants not having been a party to Equity Suit No. 16, and the lands involved in this case being at the time of the filing of Suit 16 the property of parties who were not parties to the record in Equity Suit No. 16.

128

MRS. JOSEPHINE BROWN, witness for plaintiff and intervenor, being duly sworn (by Mr. Jack, Notary), testified as follows:

By Mr. Jack:

Q. Mrs. Brown, you are the widow of Jasper J. Brown? A. Yes, sir.

Q. When did he die? A. In 1896.

Q. When were you married? A. In 1880, February 26.

Q. Did you and your husband, shortly after your marriage, move on the land involved in this suit?

OBJECTION: Defendants object to any evidence as to settlement, occupation, etc of the land involved in this suit for the following reasons:

(1) That as evidence of adverse possession it is incompetent, irrelevant and immaterial, since:

(a) No one can prescribe against the United States; nor

(b) Against a grantee of the United States until after issue of patent,

(c) Inasmuch as the patent issued less than 30 years ago, there can, under the Louisiana law, be no prescription.

(2) That as evidence in impeachment of the patent or to show its invalidity it is incompetent, irrelevant and immaterial, because:

(a) It appears that these lands are in the indemnity limits, and the proviso in the Act of February 8, 1887, has no application to indemnity lands;

(b) The relative rights of the United States and its grantees and of defendants are to be determined by the records of the United States, and not by evidence of occupation prior to the patent by the United States government to the New Orleans Pacific Railway Company;

(c) Notice and claim on the records of the United States is essential to give claimant a right as against a grant

or conveyance subsequent to the initiation of the claimant's occupation.

129

(d) Plaintiff and intervenor cannot attack a United States patent collaterally, nor at all without first showing a statutory right in themselves, and in this case it is contended by defendants that the United States government is merely a nominal party to this suit, and has no right or interest to prosecute same.

(e) The evidence does not tend to show that the patent is void on its face, or that it was issued without authority.

(f) The approval of the list and issuing of a patent is an adjudication that the land was not in the possession of the parties within the proviso of the Act of February 8, 1887.

This objection to be made general as to all witnesses.

Question re-written, for convenience, by stenographer:

Q. Did you and your husband, shortly after your marriage, move on the land involved in this suit? A. I did.

Q. When did you move on the land? A. In April of 1880.

Q. Did you build a house? A. Yes, sir; we built a house in 1881. We moved on the place and went to work on it. The house is standing there today.

Q. Where did you live while you were building that house? A. In a little house of my father's.

Q. On this land? A. No, sir; not on this land. Just off a piece.

Q. Before you built your own house you lived in your father's home on some adjoining land? A. Yes, sir.

Q. And you say you built the house in the Spring of 1881. A. Yes, sir.

Q. Do you remember which month? A. Yes, sir; it was in April, but I do not remember the day.

Q. Was there, at the time you moved on the land, any land in cultivation? A. Yes, sir; there was about 4 acres in cultivation when we first got the place and went to work on it.

Q. In what direction? In what direction from the house was this cultivation? A. It was northeast from the house, as best I can remember.

Q. It was fenced? A. Yes, sir.

Q. And you continued to cultivate that 4 acres? A. Yes, sir. We kept working that 4 acres.

Q. Did your husband, before moving on the land, deaden any timber the land? A. Yes, sir; he did.

Q. That was in what direction from the house? A. It was west of the house, I think.

Q. Examine the plat filed in evidence and marked Government's plat "A" and point to where the deadening was made? A. Right here.

Q. About this creek? A. Yes, sir.

Q. South of the old field? A. Yes, sir.

Q. What was in the northeast quarter of northwest quarter of the section? A. Yes, sir; I guess so.

Q. How many acres were in the deadening? A. 130 It never was measured, but there must have been about 2 or 3 acres, I reckon.

Q. During what year was it he made this deadening? A. That was in the Fall of 1880.

Q. How much land did he clear during the year 1881? Well, first, how much land did he clear in 1880? A. We cleared 8 acres in 1881.

Q. Making 12 acres with the 4 acres already cleared in the northwest quarter? Q. Yes, sir.

Q. Was there any land cleared in old field southwest of the house? A. There was.

Q. At the time you moved on it? A. Yes, sir.

Q. Did Mr. Brown continue to cultivate that? A. He did.

Q. Do you know about how many acres? A. About 3 acres.

Q. The map shows 35½ acres cleared, up around the house. Now, you stated that about 8 acres were cleared in 1881. When was the rest of that cleared? A. In 1882.

Q. This land you speak of that was cleared in 1881, was cleared in the Spring of that year? A. Yes, sir; the logs were rolled off, and crops were raised on it.

Q. You and your husband continued to live on this land until the date of his death. A. Yes, sir.

Q. Continuously on it? A. Yes, sir.

Q. Never moved off? A. Never.

Q. Your husband died in 1896? A. Yes, sir.

Q. How much longer did you continue to live on it after his death? A. I lived on the place 8 years after he died. I moved off in 1904.

Q. When you moved off, where did you move? A. Leesville.

Q. Did you abandon the place? A. No, sir; I moved to Leesville to school my children. I am a poor woman, and I wanted to school my children, and I thought that was the best thing to do.

Q. What did you do with it? A. I rented it.

Q. To other parties? A. Yes, sir.

Q. Did they pay you rent? A. Yes, sir.

Q. Is it still rented? A. It is.

Q. Who is running it now? A. Hayman.

Q. How much rent is he paying you? A. One-third and one-fourth.

Q. One-third of what? A. One-third of corn and one-fourth of cotton. That is the way everybody understands it.

131 Q. At the time you moved on the land, your husband was the head of a family? A. He was.

Q. A citizen of the United States? A. Yes.

Q. Had he entered any other lands? A. No, sir.

Q. Did he own any other lands? A. No, I think not.

Q. Did you intend to make this your home? A. I did, that was my intention.

Q. Was that your husband's intention? A. Yes, sir; that is what we moved on the place for.

Q. Were there any improvements on the place? Yes.

Q. How did your husband get those? A. Bought them from Stephen F. Hagan.

Q. Is he now living? A. No, sir.

Q. Had Hagan built many improvements on it? A. Nothing but a little house.

Q. And do you know who Hagan bought from? A. Wesley White, and Wesley White: well that is W. M. White.

BY MR. ATKINSON:

Q. About what are these improvements valued at, Mrs. Brown? A. I could not hardly tell you now. Those improvements were valued at about \$300.

Q. You mean the house and buildings? A. Yes, sir; the building and fence when we went there.

Q. The cultivation of the land was worth how much? A. I could not tell.

Q. As much as \$5 per acre? A. Yes, sir; I guess so.

BY MR. JACK:—

Q. When you went on there, did you have any horses, cattle? A. Yes, sir; we had some horses and cattle and hogs and all.

Q. Did they range on the land in controversy? A. Yes, sir; the hogs and sheep and all.

Q. Was it or not generally understood that these 3 forties were claimed by Mr. Brown? A. You mean 4 forties.

Q. Yes. A. Yes, those 4 forties was Mr. Brown's homestead.

BY MR. WHITE:—

Q. Mrs. Brown, do you know the numbers of the land that is involved in this suit? A. No, sir; I do not know land numbers. I never studied land numbers.

Q. Do you know anything about land lines? A. Well, yes, sir; when I pass them I can tell them.

Q. Have you ever studied land numbers and land lines? A. No, sir; I can only tell land lines when I see them; when I pass them. But those things are out of my line of business.

Q. You said something about a deadening made by your husband on a portion of this land about the year 1880. Are you able to say on what forty that deadening was made?

A. No, sir; I can not tell that. If I can see the map \* \* \* \*

Q. I am asking you to testify, not from the map, but from your recollection. A. Well, it was on that third forty, the last one west.

Q. You asked to see the map, and I will show it to you. Can you tell which one? A. Yes, sir; this one.

Q. You point to the place on the map that is marked "Old Field 1/16 acre?" A. Yes.

Q. Right down in here, that may be about it? A. I do not know who laid that off.

Q. Now, again, where? A. Here. (Pointing to the northwest corner of the northeast quarter of the northwest quarter.) To the best of my knowledge, and to the best I know about land. I will acknowledge I do not know much about it. I could show you if you were there.

Q. Were you there the day that Mr. Neal and Mr. Stokes surveyed the land and made this map? A. No, sir; I was not.

Q. After making the deadening, how long was it before your husband cut the trees down? A. He did not cut them, he just deadened that swamp timber, there.

Q. What did he do with that timber. Left it there?

A. Yes, some of it died and some lived on.

Q. Did he do anything on that particular forty?

A. No, sir; just deadened that little place.

Q. That all? A. Yes, sir.

Q. That was in 1880? A. Yes, sir.

Q. Do anything there in 1881? A. No, sir.



Q. Did he do anything on that forty in 1882? A. No, sir.

Q. Never did any more to it? A. No, sir.

BY MR. PALMER:

Q. Mrs. Brown, who occupied this place in 1914?

A. My brother, Mr. J. H. Hagan.

133 Q. How much rent did you receive? A. I did not receive much; he did not make much. I did not measure, weigh or sell what I got.

Q. Give me, please, about the amount of corn and cotton you received? A. He did not raise any cotton.

Q. Just what was raised? A. Corn and oats and so on.

Q. About how much corn did you receive from the place. A. About 3 or 4 bushels.

Q. How much hay? A. None; I just let him have it there to feed the stock on.

Q. Whose stock? A. His and mine.

Q. Did you receive anything else at all? A. No, sir.

Q. What stock did you have there? A. I had cows and hogs and all.

Q. How many cows? A. Three.

Q. How long did Mr. Hagan live on that place? A. One year.

Q. Just last year? A. Yes, sir.

Q. Who lived on there during 1913? A. Perkins, I believe it was.

Q. Now, Mrs. Brown, is it not a fact that from the time you moved off the place until the time Mr. Hagan went on it in 1914 there had been no cultivation of it? A. Yes, sir; there was.

Q. Did you receive any rent? A. Yes, sir.

Q. From whom? A. Nee Smith, Mr. Hagan. And my son went on there and made a crop on it.

Q. On an average, what did you receive as rent from the place? A. Well, I could not say.

Q. Was last year the average crop? A. No, sir; last year was less than the average crop.

Q. You stated that during the time you lived there stock ranged on the land. Is it not a fact that the entire community had cows and horses that ranged on all the land around there? A. Well, yes, our stock ranged on all that land.

Q. Your stock and other people's too? A. Yes, sir; we did not have to keep them in.

#### RE-DIRECT EXAMINATION.

BY MR. JACK:

Q. How much did your husband give for the improvements? A. \$50, I think.

Q. From whom did Stephen Hagan buy the place?

A. From Mr. White.

134 Q. And from whom did Mr. White buy?

A. From his brother.

Q. Did he originally settle it? A. His brother; yes, sir.

Q. When did his brother settle it? A. In 1872.

Q. You are, since your husband's death, the head of a family? A. Yes, sir.

Q. A citizen of the United States? A. Yes.

Q. And you have made no other entries? A. No, sir.

Q. You have not made any other applications? A. No.

Q. Own no other property? A. No. Well, I own 12 acres of land that my mother gave me.

Q. You lived continuously on the place from the time of your husband's death to 1904? A. Yes, sir.

#### CROSS-EXAMINATION.

BY MR. WHITE:

Q. Did your husband ever make any other homestead application? A. No, sir.

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MR. J. H. HAGAN, witness for plaintiff and intervenor, being duly sworn (by Mr. Jack, Notary), testified as follows:

BY MR. JACK:

Q. Mr. Hagan, where do you live? A. In Vernon Parish.

Q. How far do you live from the Jasper J. Brown homestead? A. I live in the same Section.

Q. Were you acquainted with Jasper J. Brown? A. Yes, sir.

Q. When did he move on the land in question? A. In 1881.

Q. Do you know who he bought the improvements from? A. Yes, sir; my brother, Stephen Hagan.

Q. How long had your brother been on the place? A. As far back as I can remember.

Q. How much land did your brother have cleared, and in cultivation? A. About 40 acres. (4 acres).

Q. Where was that 4 acres? A. About here. (Witness points to north half of northeast quarter at place where the center line of said Section crosses the north line.)

Q. There was 4 acres, and you say that it was in both of these forties? A. Yes, sir. According to the survey that was made of the land 8 or 10 months ago. From the information that I got about that survey.

Q. In the northeast quarter of the northeast quarter, and likewise in the northwest quarter of the northeast quarter? A. Yes, sir.

135 Q. Do you know where those lines are? A. Yes, sir.

Q. About how much of the cultivated land is in each forty: of that 4 acres of open land? A. I judge from the condition of it: about half and half.

Q. Was that cultivated by Mr. Brown the first year he moved on it? A. It were.

Q. Did he also cultivate other land? A. He did. Some land down here in the northeast quarter of the northeast quarter.

Q. Any about the house? A. Yes, sir; several acres there too.

Q. Did he have in cultivation in 1881 when he went on the place any land on the southwest quarter of the northeast quarter? A. I could not say positive that he did, because I do not remember whether he cultivated any land there or not.

Q. At the time that he moved on the place, was there some cleared land in the southwest quarter of the northeast quarter. In here. (Pointing to place on map.) A. To the best of my knowledge there must have been some cleared land in this forty here.

Q. Do you know whether or not Mr. Brown before moving on the land in question made any deadening in the northeast quarter of the northwest quarter? A. He did.

Q. About how much deadening, and where located? A. There were some 3 or 4 acres. It was somewhere right along here. (Pointing to place on map.)

Q. On that creek? A. Yes, sir; about 10 chains from this quarter corner from here on the southeast side of this little creek.

Q. The timber deadened was in the northwest corner of the northeast quarter of the northwest quarter? A. Yes, sir.

Q. You will notice on the plat a little block shaded in pink showing the old field. The deadening was south of that? A. Yes.

Q. On the same side of the branch? A. No, sir; south of the little creek from that. A little south of this field, but east of the creek.

Q. Then it is south of the old field, on the opposite side of the creek from the old field? A. Yes, sir.

Q. Are you familiar with those lines? A. Yes, sir.

Q. Do you know whether Mr. Brown claimed as his homestead, when he went on there, the 4 forties in question? A. Yes, sir; he did.

Q. Was that generally known and understood in the community? A. It was; yes, sir.

Q. Did he tell you so? A. He did.

Q. Who owned the land immediately north of the old field in the north half of the northeast quarter? A. It was first entered by one of my uncles, Stephen D. Hagan. It was owned at different times by Mr. Tinzen, Mr. Lucas, Mr. White and probably Mr. Deason.

136 Q. Is there a fence running east and west between the two places? A. Yes, sir.

Q. You say Mr. Brown moved on that tract in the Spring of 1881? Did he continue to live on the land until his death? A. Yes, sir; until in the month of September 1896.

Q. Did he ever move off, and live anywhere else? A. No, sir.

Q. You live in the same Section? A. Yes, sir. Well, I lived for a long time in the same Section, but I now live in Section 12, just across.

Q. His wife continued to live on that tract after his death? A. Yes, sir.

Q. Who is on it now? A. Willie Hagan.

Q. Does he rent from her? A. He told me he did.

Q. You heard the other witnesses who testified about the occupancy of the land etc. Was what they said true? A. Yes, sir.

#### CROSS EXAMINATION.

##### BY MR. WHITE:

Q. Mr. Hagan, what was Mr. Brown making that 2 or 3 acres of clearing up in the northwest corner of the northeast quarter of the northwest quarter for? A. I could not tell you, except that he told me that it was a fine little place for a field.

Q. Did he ever clear the place? A. No, sir.

Q. Did he do anything with it at any time subsequent to 1880, when he went there and made the small deadening?

A. No, not in that place, but he cleared a lot of land in other parts of his claim. And he claimed the whole tract.

Q. Did he make that claim every year? A. As far as I am aware of, yes. It was generally talked that he claimed that.

Q. Did he talk about that quarter section specially?

A. No, sir; just of the 4 forties.

Q. Where was he when he made this claim to people?

A. One time at the Clerk's office at Leesville. He went to the Clerk to speak to him about registering his claim, and they told him it was unnecessary for him to do that. They said they could not do anything with it.

Q. Who told him that? A. Hugh Sanders.

Q. What were the reasons given? A. I was just a small boy then, and just went along with him, and I do not remember exactly.

Q. Did they tell him it was because it was railroad land, and had already been patented? A. Yes, sir; I remember there was some talk about it being railroad land.

Q. That was how far back? A. In 1885 or 1886. It might have been a little later on than that. But about that time, anyhow.

137 H. H. HAGAN, witness for plaintiff and intervenor, being duly sworn, by Mr. Jack, Notary, testified as follows:

BY MR. JACK:—

Q. Mr. Hagan, where do you live? A. Near Hinston. One mile north of Hinston.

Q. How far from the Jasper J. Brown homestead?

A. Well, I could not tell you that, I have never measured it.

Q. About how far? A. Oh! some 18 or 20 miles, I guess.

Q. At the time Mr. Brown moved on there, you lived near it? A. Yes, sir.

Q. About how far did you live from it? A. About one mile.

Q. Do you know when Mr. Brown moved on the land? A. 1881.

Q. From whom did he buy? A. Mr. Wesley M. White.

Q. And your brother bought from Mr. White? A. No; he bought from my brother, and my brother from White.

Q. How much land did your brother have in cultivation when he sold the place to Mr. Brown? A. Somewhere about 3 or 4 acres to the best of my judgment.

Q. Can you examine that plat filed in evidence and show us where that land was located? A. No, sir; I have not my glasses.

Q. Do you know what forty the clearing was in? A. No, sir; I do not.

Q. Was the 4 acres on the little branch? A. Yes, sir; it was on the west side of this little branch.

Q. And south of whose lands? A. Tensley's.

Q. Do you know whether that land was in both forties or not? A. It was.

Q. The 4 acres was partly in the northeast quarter of the northeast quarter and partly in the northwest quarter of the northeast quarter? A. Yes, sir; but I never studied land matters.

Q. Do you know whether or not Mr. Brown made a deadening of any timber northwest of the house? A. Yes, sir; northwest of the house. Mostly west.

Q. Could you tell where that deadening was? A. No; would not undertake to.

Q. Was it anywhere near the branch? A. Yes, sir.

Q. I will ask you if you know a branch west of that house? A. Why, yes, sir; I know a little about it.

Q. I will ask you what direction from that branch this deadening was in? A. Just southeast of the creek.



## CROSS-EXAMINATION

BY MR. WHITE:—

Q. How far was that deadening from the house?

A. At that time, I suppose—not his house—there was a vacant house. \* \* \*

Q. I mean the present Brown house? A. Why, it must have been something around half a mile or further.

Q. I understand, Mr. Hagan, that you do not know anything about land lines? A. No, sir; I never studied land lines.

Q. As a matter of fact, do you know what forty that clearing was on? A. I think I do.

Q. Name it? A. What forty?

Q. Do you know what forty it was on? A. No, not correctly, I will come out and tell you.

MY JUDGE PALMER:—

Q. Mr. Hagan, you know nothing about these lines, so far as you know, as a fact, these clearings might have been on other lands? A. I do not know how he laid his homestead. I knew he moved on the land.

Q. So far as you know, as a matter of fact, you do not know whether there was any clearing upon any particular forty acres of land embraced in his homestead. A. Well, it must have been . . . .

Q. It is not what "must have been". Do you know, as a matter of fact, that any clearing existed upon any of this forty? A. It was. On some of it. But I cannot tell you which forty, or what portion of it.

Q. How do you know? A. By where the forties started.

Q. I understood you to say that you did not know anything about land lines? A. Well, I seen the corners there; I know the corners when I see them.

## RE-DIRECT EXAMINATION.

BY MRQ ATKINSON:—

Q. Do you know that he claimed the land where the cultivation and improvements were? A. Yes, sir.

Q. Does that larger cleared spot represent the shape of the clearing that he claimed. A. I could not tell you, sir.

BY MR. HUNTER:—

Q. Mr. Hagan, how far did you live from Mr. Jasper J. Brown's place? A. About 1 mile.

Q. How long did you live there? A. I could not tell you: nearly all of my life.

139 Q. How old are you now? A. 54.

Q. Do you remember when Mr. Brown moved on this place? A. I do.

Q. When? A. In 1881.

Q. How long did he live there? A. Until he died.

Q. Did Mrs. Brown live there after his death? A. She did.

Q. Are you, or not, familiar with the land that Mr. Brown lived on—whether you know the numbers or not? A. I am familiar with it, tho I cannot name it.

Q. You know where the barns, house, the field and all were? A. Yes, sir.

Q. You know he lived on that place from 1881 up to the time of his death? A. Yes, sir.

Q. And Mrs. Brown lived there until 1904, did she not? A. I do not remember exactly the date she moved away.

Q. Do you remember where Mr. Brown died? A. Yes; on the place.

MR. A. C. KIRKPATRICK, witness for the plaintiff and intervenor, being duly sworn (by Mr. Jack Notary), testified as follows:—

BY MR. HUNTER:—

Q. What are your initials, Mr. Kirkpatrick?

A. "A. C."

Q. Where do you live, Mr. Kirkpatrick? A. At Otis, Louisiana.

Q. What Parish? A. Rapides.

Q. Did you know Jasper J. Brown? A. Yes, sir.

Q. How long had you known him prior to the time there from 1876 to 1892.

moved away. I used to live in Vernon Parish. I knew him from 1876 to 1892.

Q. Did you ever live in the same neighborhood with Mr. Brown? A. Yes, sir.

Q. In what Parish? A. Vernon.

Q. Are you familiar with the land in controversy in this case? A. Yes, sir.

Q. Did you ever live near this property? A. Yes, sir.

Q. You lived on Section 11? A. Yes, sir.

Q. Do you remember when Mr. Brown moved on this property in Section 13? A. Yes, sir.

Q. What year? A. It was along about 1880 or 1881. I could not recall from memory just the exact date.

Q. Either in 1880 or 1881? A. Yes, sir; right along in there somewhere. I could not testify just when.

Q. When he moved on the land, I understand you were living in Section 11, which corners with Section 13.

A. Yes, sir.

140 Q. Do you know who lived on this property in controversy before Mr. Brown lived on it?

A. I do not think anybody did.

Q. Do you know how much of the property in controversy was in cultivation when Mr. Brown moved on it?

A. Well, a small field, some 4 or 5 acres.

Q. Do you know the location of that small field?

A. No, sir; I could not describe or designate it definitely. It was on the line between 12 and 13, but just what subdivision, I could not state.

Q. You are familiar with the line dividing Sections 12 and 13? A. Yes, sir.

Q. State Whether or not the small field which you state contained about 4 acres was near the line dividing Sections 12 and 13? A. It was.

Q. It was south of that line? A. Yes, sir.

Q. You do not know which particular forty that field was in? A. No, sir.

Q. Do you know that part of it was in Section 13? A. Yes, sir.

Q. Now, how long did you live in Section 11? A. 16 years.

Q. Was Mr. Brown living on this property when you left and went to Rapides? A. Yes, sir.

Q. When did you move to Rapides Parish? A. In the Winter of 1892. I do not remember the date exactly, but it was right around Christmas.

Q. Did Mr. Brown and his family live on the land in question from 1880 or 1881 until you left in 1892? A. Yes, sir.

Q. Did you keep up with the land after you moved to Rapides? A. No, sir.

Q. Do you know how much land Mr. Brown was claiming? A. I think it was 4 forties.

Q. State whether or not it was generally understood in the community that Mr. Brown was claiming these 4 forties? A. Yes, sir. Yes, sir.

Q. Do you know how much land he cultivated? A. No, sir; I do not. A good large field, tho. Some 25 or 30 acres. I used to help him roll his logs on it.

Q. What do you mean by that? A. Well, after he cut them, put them together.

Q. Did you ever visit Mr. Brown at his house? A. Yes sir.

Q. About what size house did he have? A. Well, it was a box house about 16 or 18 foot for a room. Just a medium box house.

Q. When was the last time you saw this tract of land?

A. Well, I never did see it after I moved from Vernon Parish.

Q. That was in 1892? A. Yes, sir.

141 Q. How much land was there in cultivation at that time? A. About 25 or 30 acres, all in one field. Now there might have been some cross fences.

Q. Mr. Kirkpatrick, were you one of the witnesses in the contest proceedings between Mr. Brown and the New Orleans Pacific Railway Company? A. Yes, sir.

Q. You are the same A. C. Kirkpatrick who testified in those proceedings? A. Yes, sir.

Q. What is your age Mr. Kirkpatrick? A. I am 63.

MR. J. C. SMITH, witness for plaintiff and intervenor, being duly sworn (By Mr. Jack, Notary), testified as follows:

BY MR. HUNTER:

Q. Mr. Smith, where do you live? A. Down in Vernon Parish.

Q. How old are you? A. I am 35.

Q. Did you know Jasper J. Brown? A. Yes, sir.

Q. He is dead, is he not? A. He is.

Q. When did he die? A. In 1894, if I mistake not.

Q. Are you familiar with the tract of land he lived on at the time of his death? A. I am.

Q. Where were you living? A. In Section 12.

Q. Do you remember when Jasper J. Brown loved on this tract of land? A. No, sir.

Q. You were too young? A. Yes, sir.

Q. How long have you known him to live on that land? A. Since 1890.

Q. In 1890 did you live on Section 13? A. No, sir; I lived in Section 7, Range 6 West.

Q. Near this property? A. Yes, sir; about a mile and a half from it.

Q. You were well acquainted with Jasper J. Brown? A. Yes, sir.

Q. How long to your knowledge did Jasper J. Brown live on the property in this case? A. From 1890 until he died.

Q. Was his residence and occupation of this land continuous? A. Yes, sir; it was.

Q. Did he ever live anywhere else from 1890 until he died? A. No, sir.

Q. And you only remember as far back as 1890 in regard to his occupation? A. Yes, sir.

142 Q. Do you know how much land he cultivated in this tract? A. About 25 or 30 acres. I gather it was about that.

Q. Can you examine the plat (marked Exhibit "A") and indicate the land which he cultivated? A. Yes, sir; this is about as near as I could get it. (Pointing at map.)

Q. Examine this plat with reference to the portion showed in pink and state whether or not that portion represents the land cultivated by Jasper J. Brown? A. Yes, sir; that about shows it.

Q. State whether or not it was generally known in the community that Mr. Jasper J. Brown was claiming the land in controversy? A. Yes, sir; it was. The place was known as the Jasper J. Brown place. And it is known that way yet.

Q. How many forties was it understood in the community that Mr. Brown was claiming? A. I understood 4 forties.

Q. That is what was generally understood? A. Yes, sir.

Q. Do you know Mrs. Josephine Brown? A. Yes, sir.

Q. Do you know whether she lived on this place after the death of her husband? A. Yes, sir; she did.

Q. How long did she live on it? A. About, let's see, he died in 1894, and she lived there about 9 years.

Q. Mrs. Brown lived on the property about 9 years after the death of her husband? A. Yes, sir.

Q. Do you know anything about the deadening of timber on any of this tract of land in controversy? A. I do; I know where there was some timber deadened on the Northeast quarter of the northwest quarter.

Q. You know that some timber was deadened on the northeast quarter of the northwest quarter. A. The reason I know that is that there is some timber there now that has a big ring around the timber. You have seen timber that was deadened and did not die. I saw dead timber down there that he had deadened. Well it don't show now to be any deadened, 15 years ago, though, it did show up to be deadened. It did show well then, and now you cannot tell but by the trees that did not die. But you can see trees that are standing that have rings around them.

Q. How long have you been familiar with that tract of land upon which the deadening was made? A. Since 1890.

Q. And you say 15 years ago the ax marks on the trees were apparent? A. Yes, sir.

Q. And some of those trees are still standing? A. Yes, sir.

Q. And that deadening is on the northeast quarter of the northwest quarter of this tract? A. Yes, sir.

Q. Will you examine the plat marked Government's Exhibit "A" and indicate on that plat the location of the deadening referred to? A. About here. (Pointing at map.)

Q. State whether or not you have indicated on the plat a point which is southeast of the corner, shown on the northeast quarter of the northwest quarter? A. Yes, sir.

143 Q. How far is the deadening from the creek shown on this plat? A. About 100 yards. It runs up to the creek. It is just a small swamp, and it is just in the bend of this creek.

Q. On which side of the creek? A. On the east side.



Q. Is the deadening on the opposite side of the creek from the clearing shown in pink in the northeast quarter of the northwest quarter as shown by the plat? A. Yes, sir.

Q. About how many acres are embraced in that deadening? A. About, somewhere, about 2 to 4 acres, to the best of my judgment.

Q. Do you know anything about the cultivation of a tract of land by Mr. Brown in the Southwest quarter of the northeast quarter? A. I know the land was cultivated, but as far as its being in that quarter I could not say. I could not state whether it reached over the line or not. I think to the best of my knowledge there was about ten acres in all cultivated down there.

Q. Do you know the location of the house and main cultivated land of Jasper J. Brown? A. Yes, sir.

Q. State whether or not Mr. Brown cultivated a tract of land south of his house, and outside of and different from, the main tract of land showed in pink on this plat? A. Yes, sir; I do know he cultivated land south of his place.

Q. You do not know it was in the southwest quarter of the northeast quarter or not? A. No, sir; only have my idea about that.

#### CROSS EXAMINATION.

By Mr. White:

Q. What 40 acres is that black land that you have been testifying about? A. I could not say.

Q. Do you know whether Mr. Brown was claiming this land as part of his homestead or leasing it? A. He was claiming it, but I cannot state whether he was claiming it as a part of his homestead or not.

MRS. JOSEPHINE BROWN, witness of plaintiff and intervenor, recalled:

By Mr. Jack:

Q. Mrs. Brown, you stated that when you first went on the land there were 4 acres open and in cultivation northeast of the house, on the creek, on the branch?

A. Yes, sir.

Q. And that in 1881 and the Spring of 1882 your husband continued to enlarge the clearing until it included about 12 acres? A. Yes, sir.

Q. I will ask you in what direction from the original 4-acre clearing did he continue in 1881 and 1882 to make the new clearing? A. Across the branch and towards the house.

Q. That is on the other side of the branch from the house? A. Yes, sir.

Q. Then, if the branch is shown to be in the northeast quarter of the northeast quarter, some of the new clearing in 1882 was in the northeast quarter of the northeast quarter? A. Yes, sir; I suppose it was.

144 Q. When did he clear the remainder of that field of 35½ acres? A. He cleared on up until about 1886 close as I can remember. Anybody who has been as troubled as I have don't remember those little things exactly, you know.

Q. You do remember, however, the clearing made in 1881 and the Spring of 1882 just after going on the land? A. Yes, sir.

Q. You are positive as to that? A. Yes, sir; because I burned the brush off of it myself.

#### DEFENDANTS' WITNESSES.

MR. R. E. McKNIGHT, witness in behalf of the defendants, being duly sworn, by Mr. Jack, Notary, testified as follows:

By Mr. White:

Q. What is your occupation, Mr. McKnight?

A. Surveyor.

Q. Did you have occasion to survey the northeast quarter of the northwest quarter of Section 13, Township 2 North, Range 7 West, any time recently? A. Yes, sir.

Q. About when? A. The latter part of February.

Q. Did you make a careful survey? A. I did.

Q. You are a graduate surveyor? A. I am.

Q. And a licensed engineer? A. Yes, sir.

Q. You traversed that forty a number of times?  
A. Yes, sir.

Q. Have you been present in court and heard the Government's witnesses testify relative to a deadening southeast of the creek which is shown on the map marked Government's Exhibit "A"? A. Yes, sir.

Q. Did you see any evidence of any such deadening from making that survey? A. I did not.

Q. From your knowledge and skill as a surveyor would you or not have found evidences of such deadening in there had there been one there? A. I think I would.

### CROSS EXAMINATION.

By Mr. Hunter:

Q. Mr. McKnight, in your examination of this land did you follow the outside lines of this forty, or did you go all over it? A. I went all over it. On the outside line at different places.

Q. Did you go thoroughly over the particular portion referred to? A. I did not go over every acre, but within 100 steps of every acre.

Q. Do you remember going on that portion of the forty which lies immediately southeast of the creek shown on the plat in the northeast quarter of the northwest quarter? A. Yes, sir.

145 Q. And you say you did not see anything on the land that would indicate a deadening?

A. No. Well, a few trees were chipped.

Q. Did you see any trees that appeared to be blazed?  
A. Yes, sir; some cut around on. There were a great many trees chipped on.

Q. Did these marks appear to be old? A. Yes, sir.

Q. Indicated that the trees had been belted or blazed a long time ago? A. Good many years, I will say?  
A. Yes, sir.

Q. Were those trees which you saw immediately southeast of that creek? A. Yes, sir.

Q. Those trees which you say were belted were large trees were they not? A. Yes, sir.

Q. Were they surrounded by smaller trees? A. Yes, there was a general mixture of timber there. Some big and some small.

Q. Was a number of the large trees belted? A. I noticed only 2 trees belted; others were chipped trying them for board-trees.

Q. Where you found large trees that were belted surrounded by small trees, would not that fact have some indication that there had been a deadening there? A. Well, just the mere fact that a couple of trees I think I noticed belted, I do not think that was evidence of a deadening.

Q. Mr. McKnight, if trees on 2 or 3 acres of that land lying southeast of the creek in 1880 were deadened, evidences of that fact would not be so great, at this time as some 15 years ago, would they? A. No; I guess not.

Q. Unless you were looking for deadening of that kind, made a long time ago, do you think you would see it? A. I went there with the express purpose of finding this.

Q. When you made this examination of the land, had anyone told you of the deadening? A. No.

Q. Were you looking for a deadening? A. Well, no, I was looking for just any kind of habitation.

Q. This examination was made in February of 1915? A. Yes, sir.

Q. You do not know anything about the condition of the land prior to that time? A. No, sir.

Q. In giving your opinion you base it simply on conditions as you observed them in February, 1915? A. Yes, sir.

Q. Did you examine any of the remainder of the land involved in this homestead claim of Mr. Brown? A. No.

Q. You did not go upon the other forties of the land in controversy in this case? A. No, sir.

Q. You confined your investigation simply to the northeast quarter of the northwest quarter? A. Well, to the 3 forties which belonged to the River Land & Lumber Company.

Q. How much time did you devote to your examination of the northeast quarter of the northwest quarter?

A. I suppose an hour or an hour and a half.

146 Q. At that period you covered the entire forty? A. Yes, sir.

By Mr. Atkinson:— CROSS-EXAMINATION Con'd.

Q. It is possible that this treed swamp might have been cleared and grew up again in this time? A. Yes, sir.

Q. There would not be an opening evident in a creek swamp 25 or 30 years after the clearing the same as there would be on an open hill, would there? A. No, sir.

Q. Do you know of any growth and brush there? A. Yes, sir.

Q. Is it not possible that you seeing this dense growth and undergrowth, a few large belted trees could be there also? I mean looking from a distance. A. Well, yes, sir.

Q. Could be what had once been a deadening, but which had subsequently grown up, and you not notice the belted trees? A. Well, the evidences of the deadening were so faint that it was not noticeable to me if there was any evidence there.

Q. Then, looking from a distance, it might exist without your detecting it? A. I was close enough to see it in any portion of the forty. Now, there might have been some undergrowth and all. I cannot believe that can hardly have been a clearing. There were only two or three trees deadened and others chipped.

Q. Though, it might have been possible that some other evidences might have existed and you not observe

them? It would be possible that some trees had fallen and rotted some years ago? A. Yes, sir.

Q. That kind of timber fall and rot very rapidly, do they not? A. Yes, sir.

Q. Then, a few remaining trees could be supplemented by undergrowth? A. Yes, sir.

Q. And at a distance the appearance would indicate that there had never been any clearing. A. Well, it would depend upon the distance. I was close enough, and did not see anything that looked like a deadening to me.

#### Re-Direct Examination—

By Mr. White:—

Q. Mr. McKnight, will you examine the document which I hand you, and can be marked defendants' Exhibit 1, and state whether or not that is a plat of a survey which you made of that forty including other forties? A. Yes, sir; that is the map.

Deft. offers, introduces & files in evidence Defendant's Map Exhibit 1.

Q. And the forty in question is the one that has a circle and in that circle figures 420, is it not? A. Yes, sir.

Q. Is that a true and correct survey of that forty? A. It is.

Q. What does the figure 420 in the circle indicate? A. The number of thousands of feet of pine timber on the forty.

Q. Would you, or not, designate that as virgin pine? A. I would; yes, sir.

Q. Is it a very unusual thing to find trees that have been chipped with axes, and with marks and scars of that sort on them throughout the woods? A. No, sir; that is very common.

147 Q. You observed no more frequent chipping of trees and scars and marks in the territory just southeast of the creek than you did elsewhere on that tract? A. Well, there was one particular place right along there in which there was more trees chipped than in the remain-

der of the forty. The place looked like it was handier for hauling.

Q. How long have you been practicing your profession? A. Since 1898.

Q. Has your practice been largely in the pine woods? A. It has; of central Louisiana.

Q. Would you say you are familiar with the conditions that prevail in these woods? A. I am.

Q. In your opinion would you not be able to recognize the deadening of 3 or 4 acres that had been deadened after an examination such as you have made in this matter. After that examination are you of the opinion that there is any deadening on the forty in question south or southeast of the creek shown on the map? A. I am not of the opinion that there is.

#### CROSS EXAMINATION

By Mr. Jack:—

Q. Mr. McKnight, for what other purpose could these trees have been belted but to deaden an area there? A. I suppose they were belted for the purpose of deadening them.

Q. What could have been the purpose of deadening just 2 or 3 trees? A. I do not know.

Q. Supposing Jasper J. Brown to have been a rational man, he would not have deadened just 2 or 3 trees for the fun of it would he? A. Well, no, sir; I should not think so.

Q. Then supposing him to have been a rational man, the only conclusion you could have reached from finding 2 or 3 trees belted is that he deadened 2 or 3 acres south of this area? A. He might have attempted.

#### RE DIRECT EXAMINATION

By Mr. White:—

Q. Mr. McKnight, are you familiar with the rather ancient legend of George Washington and his cherry tree?

A. Yes, sir.

Q. That's all.



MR. T. B. STEVENS, witness in behalf of the defendants, being first duly sworn (By Mr. Jac, Notary), testified as follows:

By Mr. White:—

Q. Mr. Stevens, by profession are you a surveyor?

A. I am.

Q. Are you also a land and timber estimator? A. I am.

Q. Have you had much experience in these matters?

A. Yes, sir; 15 years.

Q. Are you or not familiar with the northeast quarter of the northwest quarter of Section 13 about which it has been said that there is a deadening of 2 or 3 acres in the northwest corner? A. Yes, sir; I have practically had charge of these lands for a number of years for the River Land & Lumber Company, one of the defendants in this suit.

Q. Having charge of these lands, is it your duty to keep posted on these lands? A. Yes, sir.

Q. Are you aware of any deadening in the portion of the forty referred to? A. No, sir.

Q. If there were such a deadening, would you, or not, in your opinion, know something about it? A. It would seem that I would.

Q. Why does it seem to you that you would? A. Because I have been on it some 3 or 4 times since I have been representing the company.

Q. Is it or not a usual thing for idle boys and mischievous chaps to hack and deaden trees throughout the woods? A. Well, yes.

By Judge Palmer:

Q. Mr. Stevens, have you ever had an occasion to examine the other 3 forties embraced in this Jasper J. Brown claim? A. No, sir; I have never examined them, but I have been over and through them.

Q. You have over and through them? A. Yes, sir.

Q. When? A. Last year, and I passed through them about 3 years ago.

Q. Was anybody living there? A. Three years ago, there was not; last hear there was a man living there. I went there to see a party named Henry LaCroix.

Q. What signs did you see of these 3 forties now claimed by the Pickering Lumber Company? A. Only an old house.

Q. What was the condition of that old house? A. It was pretty delapidated.

Q. What, if anything, did you see in the way of a clearing A. There was considerable old field, but no fencing. I believe there was an old fence around an old barn there.

Q. But the field was not fenced in? A. No, sir.

Q. That was last year, you speak of? A. Yes, sir; the party was then living there. Three years ago when I was there, there was no one living there, and there were briars growing up, and the place showed evidences, and the house, that it had evidently been facated for several years. I did not go there for the purpose of making an investigation.

Q. What are the conditions upon which you base that opinion; I believe you said there were brier-patches growing up around the place? A. Yes, sir.

Q. Patches and briars growing up around the house? A. Yes, sir.

Q. Three years ago did you see any fence around this old field? A. Don't think I did; cannot remember seeing any.

149 Q. Last year when you went there there was no fence around the field? A. No, sir; only around a small barn.

#### CROSS EXAMINATION.

By Mr. Jack:

Q. Do you mean that there is no land in cultivation there now? A. Not around the house.

Q. What as to the tract? A. I do not know about the entire tract.

Q. You do not mean to testify that there was no land in cultivation last year or three years ago included in this tract of land? A. I do not know that there was no land in cultivation elsewhere on this tract: I mean just around the house.

Q. And you do not know how long the house had been vacant when you saw it? A. No, sir.

MR. ELZIE STOKES, witness in behalf of the defendants, being duly sworn (by Mr. Jack, Notary), testified as follows:

By Judge Palmer:

Q. Mr. Stokes, have you had occasion recently to go upon the 3 forties of land now owned by the W. R. Pickering Lumber Company embraced in what is known as the Jasper J. Brown claim, involved in this suit? A. Yes, sir.

Q. When? A. I was there with Mr. Neal, April 2 last.

Q. This map that has been filed in evidence by the Government and marked Exhibit A shows an old field: is that field under fence? A. No, sir; there is a fence on the north edge of it, it belongs, I think, to Mr. Deason.

Q. No fence at all? A. Well, there is 2 or 3 acres of fence around the house right now (new).

Q. Is that in cultivation? A. Freshly ploughed up.

Q. Except the 2 or 3 acres just referred to, was there any evidence that this old field had been cultivated in the last few years? A. No.

Q. What did this old field indicate in the way of cultivation? A. That 10 or 20 acres had been cultivated at one time.

Q. Was it grown up in bushes? A. Yes, sir; 3 and 4 feet high.

Q. When you refer to this old field, you refer to that indicated on this plat? A. Yes, sir.

Q. And simply 2 or 3 acres bore evidence of cultivation in anything like recent years? A. Yes, sir.

Q. Mr. Stokes, you are a surveyor by profession? A. Yes, sir.

Q. And a timber estimator? A. Yes, sir.

Q. You have been the regular Parish Surveyor of Vernon Parish in the past? A. Yes, sir.

150 Q. In your experience as a surveyor and timber estimator, you, no doubt, had occasion to deal with lands in various ways A. Yes.

Q. You certainly feel capable in looking at an old-grown up field to tell of its condition and something about it? A. Yes, sir.

#### CROSS EXAMINATION.

By Mr. Hunter:

Q. How long do you think it has been since this field was cultivated? A. I could not be positive about that, but I think it could not have been cultivated within the last 10 years.

#### RE-DIRECT EXAMINATION.

By Judge Palmer:

Q. With reference to the 2 or 3 acre-field enclosed near the house, did that bear evidences of being re-cleared recently? A. I did not notice particularly: I noticed the new fence and freshly plowed ground.

#### GOVERNMENT REBUTTAL TESTIMONY.

MRS. JOSEPHINE BROWN, witness in behalf of the plaintiff and intervenor, being recalled to the stand, testified as follows:

By Mr. Jack:

Q. Mrs. Brown, at the time you left the land in question to go to Leesville was the old field in cultivation? A. Yes, sir.

Q. How long after you left did that continue to be cultivated? A. About 4 years after I left there.

## FURTHER OFFERINGS BY GOVERNMENT.

Counsel for the Government offers, introduces and files in evidence letter from H. L. Muldrow, Acting Secretary, of June 6, 1887, to Registers and Receivers (5th Land Decisions 686) to be copies therefrom. Marked Government's Exhibit "E".

Counsel for Government offers, introduces and files in evidence letter F of Commissioner General Land Office of February 13, 1889, to the Registers and Receivers, to be copied from pamphlet filed marked Government's Exhibit "F".

OBJECTION: This is objected to by defendants on the ground that it is immaterial, irrelevant, *res inter alia acta*, that the act itself is the best evidence of what it contains, and that the interpretation that may have  
 151 been put on that act by S. M. Stockslager, Commissioner, is incompetent when the Act itself is already in evidence before the court.

Counsel for the Government offers certified copy of letter from the Commissioner of the General Land Office to D. A. McKnight, attorney of Washington, D. C., of March 2, 1893, it being admitted by attorneys for the defendants that McKnight was resident attorney for the New Orleans Pacific Railway Company in Washington at that time. Marked Government's Exhibit NG".

OBJECTION: This offering is objected to by the defendants River Land & Lumber Company and W. R. Pickering Lumber Company because it can have no retroactive effect. That notice having been given many years after both patents had issued, and after the land had been sold by the railway company.

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This case having been re-opened at Alexandria, Louisiana, on May 4, 1915, for the taking of further testimony.

Present: for the Government Geo. Whitfield Jack, US Attorney; for the defendant New Orleans Pacific Railway Company Fred G. Hudson; for the defendant River Land & Lumber Company H. H. White. Louis LaCroix, Clerk to U. S. Attorney, stenographer.

ELZIE STOKES, witness in behalf of the defendant River Land & Lumber Company, being duly sworn, testified as follows:

By Mr. White:

Q. Mr. Stokes, you were at Shreveport, when the case was tried last week. A. Yes, sir.

Q. Did you go to the Jasper J. Brown claim and make a re-examination as to the deadenings and old fields? A. Yes, sir.

Q. Who accompanied you? A. Tom Stevens.

Q. With reference to the northeast quarter of the northwest quarter Section 13, Township 2 North, Range 7 West, did you find any deadening? A. Yes, sir.

152 Q. How much? A. very little; 5 trees in all that had been partly deadened but never died.

Q. Would you describe that as a clearing? A. No, sir; I would not. I do not believe it was ever intended for a clearing.

Q. You made that examination by the consent of parties after the hearing of the case that was had at Shreveport last week? A. Yes, sir.

#### CROSS-EXAMINATION.

By Mr. Jack:

Q. Mr. Stokes, you state that you believed it was not intended as a clearing in the beginning. You do not know what it was intended for do you? A. No, I do not know, but that is my idea from the appearance.

Q. Merely your idea? A. Yes, sir.

Q. About what area was covered by the 5 trees which you found? A. About 1/4 of an acre covered all of the trees.

Q. Other trees might have been cut down and rotted long ago? A. They might.

Q. Or fallen? A. Yes, sir.

Q. Those trees were trees that had been cut but not perfectly belted, so that they did not die. There was plenty of other trees around there that could have been deadened, but they did not cut any but the pines? A. Yes, sir.

Q. These were all pines? A. Yes, sir.

#### RE-DIRECT EXAMINATION.

By Mr. White:

Q. Mr. Stokes, if there had been any clearing to amount to anything there, even though it was made many years ago, would there not be some sign still of that clearing? A. Yes, sir; it would have showed up, if it had been a clearing.

Q. It is not very difficult is it for an experienced timber man to tell absolutely virgin timber from second growth timber is it? A. No; no trouble at all; easy matter.

Q. Is there evidence of much second growth timber in the neighborhood of these 5 trees? A. No, it had the same appearance as the woods around it.

#### RE-CROSS EXAMINATION.

By Mr. Jack:

Q. You do not mean to say that these other trees not belted had not grown up since the 5 first trees belted? A. No.

Q. Could they not have grown up since the first trees were belted? A. I do not believe; they looked to be old.

153 Q. Did you measure any of them? A. No, sir; I did not.

Q. The size of a tree is not a usual criterion of its age, is it. A. No; not every time it is not.

Q. Some trees in that time could have grown up more than others? A. Yes, sir.



Q. You are depending only on your observation?  
A. That is a fact.

Q. And you are not prepared to state on your oath that some of these trees have not grown up there since 1880? A. No, sir; some of them.

#### RE-DIRECT EXAMINATION.

By Mr. White:

Q. What was the whole number of trees probably on that quarter acre? A. Well, I could hardly say, there must have been 10 or 15. I could not be positive.

Q. And what was the size of these trees? A. About 24 inches.

Q. Is it not a fact that it would take longer than from 1880 for those trees to grow more than 24 inches in diameter? A. Yes, sir; I think so.

MR. TOM STEVENS, witness on behalf of the defendants, being first duly sworn, testified as follows:

By Mr. White:

Q. Mr. Stevens, did you accompany Mr. Stokes on this re-examination of the Jasper J. Brown claim after the trial at Shreveport? A. I did.

Q. Did you take part with him in making the examination on the northeast quarter of the northwest quarter of Section 13 in question as to whether or not there was a clearing just southeast of the corner? A. I did.

Q. Did you see any evidence of a clearing? A. I saw 5 trees partly girdled. No evidence of a clearing.

Q. From the appearance of the forest at that place would you as an expert surveyor and woodsman conclude that the woods there was virgin or would you say that an old clearing had grown up? A. It had the same appearance as the other woods surrounding the forty.

Q. The other woods was virgin timber? A. Yes, sir.

Q. Then, this appears to be virgin timber? A. Yes, sir.

Q. Did you notice quarter of acre these trees were found? A. I did.

Q. How large was the largest of the trees? A. About 24 or 30 inches in diameter.

Q. What sort of trees were they? A. White oaks and red oaks, gum, and then I think there were 1 or 2 pines.

Q. In your opinion could a white or red oak, a gum, or pine 24 to 30 inches in diameter grow that large from 1880 to the present time? A. I would not think so.

154

## CROSS-EXAMINATION.

By Mr. Jack:

Q. If they had been saplings 8 inches in diameter there in 1880 they could have grown to their present size since then, could they not? A. Yes, sir.

Q. What are trees usually girdled for? A. For the purpose of killing.

Q. Then, when you go to the woods and see a number of girdled trees is it not done for the purpose of making a deadening on that land? A. If a number of trees are girdled, yes sir, but I see in forests places where the trees are girdled around and yet I would not say there is a clearing there.

Q. Do you suppose someone went to that place and cut 5 trees for fun? A. It might have been.

State of Louisiana,  
Western District of Louisiana.

This is to certify that the above and foregoing is a true and correct translation of my stenographic notes taken at the trial of the above numbered and entitled cause.

LOUIS LACROIX,  
Clerk to U. S. Attorney, Stenographer.

156      **RESOLUTION OF STOCKHOLDERS'  
MEETING.**

Government Exhibit A-1.

Whereas the board of directors of this company have duly adopted the following resolution to wit:

**RESOLUTION.**

"WHEREAS the Congress of the United States has duly adopted an act, approved February 8, 1887, entitled "An act to declare a forfeiture of lands to the New Orleans, Baton Rouge and Vicksburg Railroad Co., to confirm title to certain lands, and for other purposes," and it is provided in the third section thereof as follows: "That the relinquishment of the lands and the confirmation of the grant provided for in the second section of this act are made and shall take effect whenever the Secretary of the Interior is notified that said New Orleans Pacific Railroad Co., through the action of a majority of its stockholders, has accepted the provisions of this act, and is satisfied that this company has accepted and agreed to discharge all the duties and obligations imposed upon the New Orleans, Baton Rouge & Vicksburg Railroad Co. by the Act of March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Co., and to aid in the construction of its road, and for other purposes"': Now therefore be it

"RESOLVED BY THE BOARD OF DIRECTORS OF THE NEW ORLEANS PACIFIC RAILWAY CO., That the provisions of the said Act of Congress are hereby accepted, and that the Company do also accept and will discharge all the duties and obligations imposed upon the New Orleans, Baton Rouge and Vicksburg Railroad Co. by the act of March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Co., and to aid in the construction of its road, and for other purposes.'

"RESOLVED, That a meeting of stockholders of the company be called for Thursday, the 14th of April, 1887, at 12 m., for the purpose of accepting the provisions of said

act of Congress of February 8, 1887, and accepting and agreeing to discharge the said duties and obligations imposed upon the said New Orleans, Baton Rouge & Vicksburg Railroad Co. by said act of Congress of 1871:" THEREFOR be it

RESOLVED by this meeting, representing 67,000 shares of stock out of the 67,200 shares issued and outstanding, That the above resolution, and the same hereby is, in all things ratified and confirmed; that this company does hereby accept the provisions of said act of Congress of February 8, 1887; and also accepts and will discharge all the duties and obligations imposed upon the New Orleans, Baton Rouge & Vicksburg Railroad Co. by said act of Congress of March 3, 1871.

RESOLVED, That the said Board of Directors are hereby authorized and directed to adopt any and all resolutions and the president and secretary of this company to execute any and all instruments, under corporate seal or otherwise, necessary to complete, consummate, or evidence such acceptance of said Act of February 8, 1887, and to execute any instruments required or needful whereby this company agrees to discharge all duties and obligations imposed upon the New Orleans, Baton Rouge & Vicksburg Railroad Co. by said act of March 3, 1871, entitled "An act to incorporate the Texas Pacific Railroad Co., and to aid in the construction of its road, and for other purposes."

A true copy of the minutes.

Attest: April 14, 1887.

ROBERT STRONG, Secretary.  
Government Exhibit "B."

#### 157 AGREEMENT TO RECONVEY LANDS.

It is hereby agreed and stipulated by the New Orleans Pacific Railway Co., and by John F. Dillon and Henry M. Alexander, trustees of the land grant claimed by said railway company, as follows:

1. That all appeals now pending before the Secretary of the Interior from decisions of the Commissioner of the General Land Office adjudging that the adverse claimants were actual settlers at the date of definite location of said railway company's road shall be, and they are hereby, withdrawn, to the end that said settlers may obtain patents for said lands.

2. That neither said railway company nor said trustees will hereafter take appeals to the Secretary of the Interior from decisions of the Commissioner of the General Land Office adjudging that the adverse claimants were actual settlers at the date of definite location of said railway company's road, but, to the end that said settlers may obtain patents for said lands, said adjudication by the Commissioner shall be regarded as final.

3. That in cases where patents have issued to said railway company for lands which have been or may hereafter be adjudged by the Commissioner of the General Land Office to have been in the possession of actual settlers at date of the definite location of said railway company's road, and title is in said railway company, said railway company and said trustees agree to make without delay, conveyance thereof to the United States; and where such lands have been sold by said railway company to third persons, said railway company undertakes to recover title thereto without delay and convey the same to said settlers or to the United States, and the said trustees undertake to join in such conveyances and to do all acts necessary on their part to enable the railway company to carry out this agreement and stipulation.

Dated August 3, 1892.

JOHN F. DILLON,  
H. M. ALEXANDER,  
As Trustees.

THE NEW ORLEANS PACIFIC RAILWAY COMPANY  
By D. A. McKNIGHT, Attorney.  
SSM

Government Exhibit "C."

158      LAND OFFICE RECORD OF CONTEST  
            OF JASPER J. BROWN.

8-7641

"F"                      4—207              16

F.I.W.

DEPARTMENT OF THE INTERIOR,  
General Land Office,

Washington, D. C., February 7, 1901.,

I, Binger Hermann, Commissioner of the General Land Office, do hereby certify that the annexed copies, being the record in the case of Jasper J. Brown v. New Orleans Pacific Railway Company, involving the NE $\frac{1}{4}$  NW $\frac{1}{4}$  N $\frac{1}{2}$  NE $\frac{1}{4}$  and SW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 13, T. 2 N., R. 7 W. La. Mer., Louisiana, are true and literal exemplifications of the originals on file or of record in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Seal of this Office to be affixed, at the City of Washington,  
(SEAL) on the day and year above written.

BINGER HERMANN,  
Commissioner of the General Land Office.  
Evd

159      R.I.F.M.  
            A.P.R.

UNITED STATES LAND OFFICE,

Natchitoches, La., April 18th, 1889.

Hon. Commissioner,  
Washington, D. C.

Sir:

We have the honor to transmit herewith application of Jasper J. Brown, to enter under the homestead law as

provided by Sec. 2, of the Act of Congress, approved Feb. 8, 1887, entitled an "Act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railway Co. to confirm the title to certain lands and for other purposes", the NE $\frac{1}{4}$ , NW $\frac{1}{4}$ , N $\frac{1}{2}$  NE $\frac{1}{4}$  and SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 13, T. 2 N. R. 7 W., together with corroborative affidavit, notice, objection and testimony, &c., accompanying the same.

Our joint opinion duly signed, is attached to said case.

Our decision being in favor of the applicant and recommending that he be entitled to enter the land as applied for.

Due notice of our decision and of right of appeal were given to E. B. Wheelock, Prest. N. O. Pacific Railway Co., by Register and Receiver on December 6, 1888, same duly acknowledged as per letter return receipt.

Appeal dated December 24, 1888, and filed Dec. 29, 1888.

Answer of Claimant to appeal dated Jany. 7, 1889, and filed Jany. 15, 1889.

Very respectfully,

WILLIS HOLMES,  
Register.

A. E. LEMLE,  
Receiver.

160

GENERAL LAND OFFICE.

"A"

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## DEPARTMENT OF THE INTERIOR

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From

a  
REGISTER n RECEIVER,  
d  
LAND OFFICE  
Natchitoches, La.  
April 18-1889.

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Transmitting application of  
Jasper J. Brown to enter under  
the homestead laws as provided  
by Sec. 2 of the Act of Congress  
approved Feb. 8, 1887.

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1            8 - 7641  
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F 24

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165

161        JASPER J. BROWN

vs.

N. O. PACIFIC RY. CO.

## INDEX.

1st. Testimony of Claimant—Jasper J. Brown, taken  
Aug. 10th, 1888, marked C.

- 2nd. Testimony of Witness Chiler Nessmith taken Aug. 10th, 1888, marked D.
- 3rd. Testimony of Witness Aug. C. Kirkpatrick, taken Aug. 10th, 1888, marked E.
- 4th. Notice of Application marked A.
- 5th. Postal Receipt Card No. 183 showing Service of Notice of Application.
- 6th. Objections filed by N. O. P. Ry. Co. Marked B.
- 7th. Copy of Notice of Hearing marked A.
- 8th. Return Postal Cards 247 & 276 showing service of notice of hearing.
- 9th. Transcript of proceedings and the supplemental affidavits of claimant and his witnesses, and Report.
10. Postal Return Card No. 268, showing service of Notice of decision.
11. Appeal filed by N. O. Pacific Ry. Co.
12. Postal Return Card showing Notice of Appeal.
13. Answer to Appeal.

162

(4-007)

APPLICATION NO. \_\_\_\_\_

HOMESTEAD.

Land Office at Natchitoches, La.

Aug. 10, 1888.

I, Jasper J. Brown, of Vernon Psh, Walnut Hills P. O., do hereby apply to enter under Section 2289 Revised Statutes of the United States, and as provided in Sec. 2, Act of February 8, 1887, the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$  & SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section 13, in Township 2 N., of Range 7 W, containing 163.71 acres.

JASPER J. BROWN.

Land Office at.....

....., 189..

I, ....., REGISTER OF THE LAND OFFICE, do hereby certify that the above application is

for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

.....  
(10500-15 m) o 6-261

Register.

163

(4-007)

No.....

# HOMESTEAD APPLICATION.

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JASPER J. BROWN,

Natchitoches, Aug. 10, 1888.

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Section 13, Town. 2 N. Range 7 W.

---

Col. Wheelock notified

Aug. 15" / '88.

164

(4-063)

# HOMESTEAD.

## AFFIDAVIT.

LAND OFFICE AT NATCHITOCHEs, LA.

Aug. 10th, 1888.

I, Jasper J. Brown, of Vernon Psh. La., having filed my application, No. ...., for an entry under Section

2289, Revised Statutes of the United States, and as provided in Sec. 2, Act of 8th Feby. 1887, do solemnly swear that I am a citizen of the United States and am over 21 years of age, and settled on this claim in 1881; that said application No. . . . . is made for the purpose of actual settlement and cultivation; that said entry is made for my own exclusive benefit, and not directly or indirectly for the benefit or use of any other person or persons whomsoever; and that I have not heretofore had the benefit of the homestead laws.

JASPER J. BROWN.

Sworn to and subscribed this 10th day  
of Aug. 1888, before

WILLIS H. HOLMES,  
Register of the Land Office.

SEE NOTE, which Clerks of the Courts and Registers and Receivers will read and explain THOROUGHLY to persons making application for lands where the affidavit is made before either of them (See directions to Land Officers on Duplicate Receipt).

NOTE.—If this affidavit be acknowledged before the Clerk of the Court, as provided for by Sec. 2294, U. S. Revised Statutes, the homestead party must expressly state herein that he or some member of his family is residing upon the land applied for and that bona fide improvements and settlements have been made. He must also state why he is unable to appear at the Land Office.

Electros (477-25,000).

Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for no other purpose.

165        If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing

of the same, but the question whether the land is being cleared of its timber for legitimate purposes is a question of fact, which is liable to be raised at any time. If the timber is cut and removed for any other purpose, it will subject the entry to cancellation and the person who cut it will be liable to civil suit for recovery of the value of said timber, and also to criminal prosecution, under Section 2461 of the Revised Statutes.

166

Copy

(4-367)

Copy

UNITED STATES LAND OFFICE,

Natchitoches, La. Aug. 15", 1888.

To The New Orleans Pacific Railroad Company,—

YOU ARE HEREBY NOTIFIED that Jasper J. Brown, of Walnut Hill, Vernon Pa. La., has made application at this office to enter the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Sec. No. 13, T. 2 N. of R. 7 W., under the Homestead Law. As this application conflicts with your selection of the same lands (list filed March 3rd, 1885), you are required to present your objections to the allowance of said entry within thirty days after the receipt by you of this notice.

Yours respectfully,

Signed: WILLIS HOLMES,

Register.

Filed Oct 12/88

Willis Holmes,

Register.

11800—5m

167

IN THE U. S. LAND OFFICE,  
NATCHITOCHES, LA.

In the Matter of:	}	On Notice of Aug. 13/88.
CLAIM OF		
JASPER J. BROWN.		

OBJECTIONS BY THE NEW ORLEANS PACIFIC  
RAILWAY COMPANY

To

THE REGISTER AND THE RECEIVER U. S. LAND  
OFFICE,  
Natchitoches, La.

Please take notice that the New Orleans Pacific Railway Company hereby objects to the claim in favor of the claimant above named, and on the following grounds:

1st. That the claimant has never complied with the acts of Congress, U. S. Rev. Stat. 2257-2317, in such manner as to lay a legal foundation for his claim as against objector.

2nd. That the claimant at the time of the definite location of the New Orleans Pacific Railway Company, as fixed by the second section of the Act of Congress of February 8th, 1887, entitled "An act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes", had not made any of the declaratory statements, proofs, payments or tenders of payment, required by law, to lay a foundation for his claim as against objector.

Yours respectfully,

THE N. O. PACIFIC RY. CO.,

E. B. Wheelock, Prest.  
Howe & Prentiss, Attys.

New Orleans, La., Sept. 1, 1888.

Received & Filed Sept. 4/88.

Willis Holmes,  
Register.

Filed Oct. 12/88.

Willis Holmes,  
Register.

168

Copy

4-366

Copy

Hearing.

# RAILROAD CONTEST.—NOTICE OF HEARING.

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United States Land Office,  
Natchitoches, La.

September 4", 1888.

Jasper J. Brown, of Vernon Parish, La., having applied for the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$  & SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Section No. 13, T. 2 N, of R. 7 W, under the Homestead laws; and the New Orleans Pacific Railroad Company having filed objections to the allowance of said application, claiming that said land was selected for the benefit of said company on the 3rd day of March, A. D. 1885, an investigation is hereby ordered to determine whether said land is subject to the right of the said company, and a hearing therein will be had before the Register and Receiver at this office on the 12" day of October, A. D. 1888, at 10 o'clock A. M., at which time and place the parties interested are hereby summoned to be present and produce testimony.

Signed: WILLIS HOLMES,  
Register.

11799-5m

Filed Oct. 12/88.

Willis Holmes,  
Register.



169

UNITED STATES LAND OFFICE,  
Natchitoches, La.

In the matter of the application of Jasper J. Brown, of Vernon Parish,, La. to enter under the homestead laws NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Sec. 13, T. 2 N. R. 7 W. La. Mer., as provided in Sec. 2 of Act of Congress approved Feby. 8th, 1887, the land above described having been selected by the N. O. Pacific Ry. Co. Mch. 3, 1885.

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Settlement alleged in 1881 April. Application dated Aug. 10th, 1888. Notice of hearing dated Sept. 4, 1888, was served on E. B. Wheelock, President N. O. P. Ry. Co. by registered mail. Hearing was called October 12th, 1888, Jasper J. Brown, claimant, and his witnesses Chiler Nessmith and Aug. C. Kirkpatrick appearing in support of the application.

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170

HOMESTEAD, PRE-EMPTION AND  
COMMUTATION PROOF.

TESTIMONY OF CLAIMANT.

Full and Specific Answers must be given to each question. Evasive answers will be fatal to the proof.

JASPER J. BROWN, claimant, being first duly sworn, testifies as follows:

Question 1. What is your correct name, your age, and occupation? If employed by any person, state by whom.

Ans. Jasper J. Brown, 26. Farmer. For self.

Ques. 2.—What is your post-office address?

Ans. Walnut Hill P. O. Vernon Parish, La.

Ques. 3.—Are you the identical person who applies to me to make (or homestead entry No. —) at the Natchitoches Land Office on the 10th day of Aug. 1888, and what is the true description of the land now claimed by you?

Ans. I am. NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of NE $\frac{1}{4}$  Sec. 13, T. 2 N. R. 7 W.

Ques. 4.—Where did you live before settling upon this land, and what was your occupation?

Ans. In Sec. 13, T. 2 R. 7. Farming.

Ques. 5.—Are you a citizen of the United States, or have you declared your intention to become such?

Ans. I am.

(In case the party is of foreign birth, a copy of his declaration of intention to become a citizen or full naturalization certificate officially certified, must be filed with the case. The latter is only required in final homestead entries.)

Ques. 6.—Are you interested in any other entry or filing than the one upon which you now seek to make proof?

Ans. I am not.

Ques. 7.—Have you ever made a pre-emption filing for any other tract of land, or made any other homestead entry or filing or entry of any kind? (Answer each question separately, describe the land and state what disposition you made of your claim.)

Ans. No. No. No. No.

Ques. 8.—Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. No.

171

Ques. 9: What is the character of the land?

Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. Ordinary timbered farming land, most valuable for agriculture.

Ques. 10: Is the land valuable for coal, iron, stone, or minerals of any kind? Has any coal or other minerals been discovered thereon, or is any coal or mineral known to be contained therein? Are there any indications of coal, salines, or minerals of any kind on the land? If so, describe what they are.

Ans. No. No. No. No.

**Ques. 11:** If the land is timber land, state the kind, quality, and amount of timber thereon at date of instituting your claim; the amount still standing; how much has been cut and removed and by whom; and whether the same has been disposed of and to whom; also whether any other person than yourself has any interest in the timber, and if so, what kind of interest?

**Ans.** Timber, is Pine, Oak, Ash and Hickory. Timber is all standing, except that used for the farm.

**Ques. 12:** If the land is used for grazing purposes, state how and by whom it is so used, and whether it is within any stock range or fence or other inclosure, and who owns or controls the range or inclosure?

**Ans.** It is not so used.

**Ques. 13:** When did you first make an actual personal settlement on this land? State what you did to make such settlement and the character and value of the improvements you then placed upon the land.

**Ans.** In 1881. Built a house of logs 16x16. 1 crib, 1 smoke house, cleared & cultivated 10 acres land. Value \$100.00.

**Ques. 14:** Was the land occupied by any other person when you made such settlement? If so, state who lived there and how you obtained possession.

**Ans.** It was not.

**Ques. 15:** When did you actually move on this land and commence living permanently thereon?

**Ans.** In April of 1881.

**Ques. 16:** Where has been your actual personal residence and home during the whole time since the date of this filing or entry?

**Ans.** On this land claimed by me.

**Ques. 17:** Has your residence on the land now claimed been actual or constructive, continuous or at intervals? Explain what you mean by actual continuous residence.

**Ans.** It has been actual & continuous as I have lived there and no where else.

172

**Ques. 18:** Have you resided or boarded elsewhere than on this land since commencing your

residence thereon? If so, state when and where, how often and for how long?

Ans. No.

Ques. 19: Where have you voted since establishing residence on this land, and where did you last vote and how long have you voted there?

Ans. Ward 6 Vernon Psh., at same place 4 years.

Ques. 20: How many times have you been absent from said tract since you commenced actual residence thereon? Give the dates when each absence commenced and terminated and the cause therefor.

Ans. Never have been absent.

Ques. 21: Have you a family and of whom does your family consist?

Ans. I have a wife & 4 children.

Ques. 22: Has your family resided with you upon this claim? If so, state when they moved on the land, how long they have lived there, and whether they actually reside there still.

Ans. They have. April 1881, & have lived there ever since 1881. They live there now.

Ques. 23: If your family has been absent any part of the time since moving on the land, state the causes for and the dates when each absence commenced and terminated?

Ans. They have not been absent.

Ques. 24: When and by whom was your house built? Is it habitable at all seasons of the year?

Ans. In 1881 by myself. It is.

Ques. 25: Did you and your family live in said house during all of each or any winter since the date of your filing or entry? If not, state the duration and causes of each absence.

Ans. We did.

Ques. 26: If your family has not lived with you on this claim since the date of your filing or entry, state the causes therefor, where they did reside and where they are now living.

Ans. They have lived with me on this claim.

Ques. 27: Do you own any other residence house than the onw now on your claim? If so, state where and who occupies the same.

Ans. I have another house on the SW $\frac{1}{4}$  of NE $\frac{1}{4}$ . James Stadden.

173 Ques. 28: Describe fully the house on this claim, giving value thereof, also describe fully all other improvements thereon of whatever kind, giving the value of each and total value of all improvements.

Ans. A log house 16x16. Gallery on each side & ten foot gallery on the end. The rear gallery been converted into two rooms, 1 smoke house and one crib, both of logs, & 1 well. Total value \$100.

Ques. 29: What farm implements do you own and use on this claim? State kind and number, and how long you have owned the same.

Ans. Plows, sweeps, harrows & hoes, bought as needed to replace the worn tools.

Ques. 30: What domestic animals and live stock do you own and keep on this claim? State kind and number of each kind.

Ans. Three horses; 20 cattle.

Ques. 31: State what article of furniture of every kind you keep and use in your residence on this claim, and how long you have had them there.

Ans. Bedsteads, tables, chairs, bought as needed.

Ques. 32: Have you any personal property or live stock of any kind elsewhere than on this claim? If so, describe the same and state where the same is kept.

Ans. None.

Ques. 33: How many seasons have you raised crops on this land and what kind of crops have you raised each season?

Ans. 8 years. Corn & cotton.

Ques. 34: How many acres have you put in crops each year, and how much did you raise? State the amount in bushels of each kind.

Ans. Commenced with 10 acres & increasing. Now have 22. Average 125 bu. corn. Average 3 bales cotton.

**Ques. 35:** Have you the land in crop this year, or is it prepared for cropping the coming season? How much of the land is so cropped or prepared?

**Ans.** Yes.

**Ques. 36:** Do you carry on any trade, profession or business elsewhere than on this land? If so, state what business you have been engaged in while claiming this land, where it was carried on and the distance from your claim.

**Ans.** No.

**Ques. 37:** If you have been employed in working for others away from this claim since you established residence thereon, state when, where and for whom, and in what occupation or capacity, how long you have so worked and where you staid and lived during that time?

**Ans.** No.

174 **Ques. No. 38:** Where are you assessed for taxes, personal, real estate or license, and when and where have you paid taxes since claiming this land?

**Ans.** In Vernon Parish. Personal tax in 1887 in Vernon Parish.

**Ques. 39:** Are the improvements on this land assessed for taxes? If so, at what valuation? Have such taxes been paid? If so, when and by whom?

**Ans.** They are at \$50. Yes. In Vernon Parish by myself.

**Ques. 40:** What use is made of this land and who, besides yourself, and family, uses it or causes it to be used?

**Ans.** For farming by myself alone.

**Ques. 41:** Have you sold, transferred or mortgaged this land, or offered or agreed to sell or dispose of it, and at what price?

**Ans.** I have not.

**Ques. 42:** Do you make this entry in the interest or for the benefit of any one else, or has any person other than yourself and family any interest, immediate or prospective, in this entry? If so, state for whom the entry is made?

**Ans.** No. No. No. No.



**Ques. 43:** Has any person paid your expenses for making this entry, or paid you wages or a salary on condition that you make said entry, or agreed to do either, or agreed to pay the entry money for you, or to pay the fees or commissions, with the agreement or understanding that you will deed the land after entry is made?

**Ans.** No. No. No. No.

**Ques. 44:** Do you make this entry in good faith, for the exclusive purpose of a home and farm for yourself and family?

**Ans.** I do.

(Signature of Claimant) JASPER J. BROWN.

175 I HEREBY CERTIFY that each question in the foregoing deposition was orally propounded to the said Jasper J. Brown, and the foregoing answers severally given by him thereto before he signed the same and after being sworn according to law; that the said Jasper J. Brown is to me personally known (or satisfactorily identified by Augustus C. Kirkpatrick) as the person he represents himself to be in making this proof; that I have called his attention to the laws and penalties against false swearing and that the foregoing deposition was sworn to and subscribed before me this 10th day of August, A. D. 1888.

Filed Oct. 12/88.

Marked "C"

WILLIS HOLMES,

WILLIS HOLMES,  
Register.

Register.

ENDORSED ON BACK: (4-369-a) TESTIMONY OF CLAIMANT. Pre. D. S. No. . . . . Cash No. . . . .  
Orig. Hd. No. . . . . F. C. No. . . . . Name of Claimant Jasper J. Brown, Land Office at Natchitoches, La.  
Approved: Willis Holmes, Register. A. E. Lemee, Receiver. (7599-100m.)



# HOMESTEAD, PRE-EMPTION, AND COMMUTATION PROOF.

## Testimony of Witness.

(The testimony of two witnesses, taken separately, in addition to the testimony of claimant, is required in each case.)

(The testimony of witnesses must be taken at the same time and place before the same officer as claimant's final affidavit.) The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.

Question 1.—What is your true name (christian and surname), given in full, your age, residence, and present post-office address? (Give description of land on which you reside, quarter section, township and range.)

Answer: Chiler Nessmith. 50. Vernon Parish. Walnut Hill P. O. W.  $\frac{1}{2}$  SW $\frac{1}{4}$  & S $\frac{1}{2}$  NW $\frac{1}{4}$  Sec. 5 T. 2 R. 6.

Ques. 2: What is your present occupation and where and by whom have you been employed since 1881, the date of claimant's settlement on said tract?

Ans. Farming, for myself.

Ques. 3: Are you related to claimant or in any way interested in this claim, or are you connected with him in business of any kind?

Ans. No. No. No.

Ques. 4: How far from the residence of claimant, on said tract, do you reside, and how long have you lived there?

Ans. About 2 miles. Since 1880.

Ques. 5: Give the names and residences of two or more persons living nearer to the claimant of this tract than yourself? If none are nearer than you, give the names of two or more next nearest and state the land on which they reside:

Ans. Lemnel A. Tinsley, Walnut Hills, P. O.  
Robert Poe, " " "

**Ques. 6:** How long have you known Jasper J. Brown, the claimant for whom you appear as a witness, where has he been living since you first knew him up to the present time, and is he the identical person he represents himself to be?

**Ans.** About 10 years. In Vernon Psh. He is.

**Ques. 7:** Are you well acquainted with the land embraced in this claim? Give correct description thereof; also state the extent of your knowledge, and how you know what you affirm.

**Ans.** I am. NE $\frac{1}{4}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$ , SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Sec. 18, T. 2 N. R. 7 W. I am familiar with the Gov. Survey Lines.

**Ques. 8:** How often have you been on this tract of land since claimant's alleged settlement thereon, at what time or times, and when did you last see him on the land?

**Ans.** Very often. On Aug. 7, 1888.

177 **Ques. 9:** Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

**Ans.** No. No.

**Ques. 10:** State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal or mineral land.

**Ans.** It is timbered farming land.

**Ques. 11:** Are there any indications of coal, minerals, or salines on this land?

**Ans.** No. Na. No.

**Ques. 12:** Is it within any stock range or fence or other inclosure? If so give the names of the parties owning or in any manner controlling such inclosure or range.

**Ans.**

**Ques. 13:** If the land is timbered land, state whether the timber, or any portion thereof, if any, has been cut or removed, and by whom?

**Ans.** The timber is all standing except that used on the farm by claimant.

**Ques. 14:** What is this land used for, and who (if any

one) besides the claimant is in any manner interested in or uses or controls the land or claims the timber thereon?

Ans. Farming by claimant alone

Ques. 15: What has been claimant's occupation since you first knew him and where has he been employed, and by whom?

Ans. Farmer, for himself.

Ques. 16: Has he had any other living or boarding place than on this land during the existence of his present claim? If so, state where he has been living or stopping.

Ans: None.

Ques. 17: Does claimant's family reside on said land? When did they move thereon? How long have they lived there, and do they still reside thereon? If not, where do they reside?

Ans. They do. In 1881. Since 1881 & still reside there.

Ques. 18: Has claimant's family been absent from said land since moving thereon? If so, state how often, how long each time, and the cause of said absence or absences.

Ans. No.

Ques. 19: State in full and in detail all the facts within your knowledge as to claimant's actual residence upon this claim; when and how often you have seen him upon the land; what were the evidences that he actually lived on the tract; how long he has lived there, and whether he lives there now.

Ans: I have been on this claim frequently, have helped Brown pile logs when he had cleared & have seen him building two fences & barn and cultivating the land and having his family with him on this land all the time since 1881.

Ques. 20: If claimant has been absent from said land since his alleged settlement, state fully how often, when, how long each time, and for what purpose?

Ans. He has never been absent.

178

Ques. 21: State in detail the character of the improvements; what they consist of, and when they were made; the value of each distinct improvement,

fully describing the same; also whether they were made by the claimant or by some other persons.

Ans. A dwelling house	Value \$50
Corn Crib	Value \$10
Smoke House	Value \$50
22 acres cleared & fenced land. Building made by claimant in 1881.	

Ques. 22: Give the size, construction, and material of claimant's house on said tract, and also state whether the same is habitable during all seasons of the year.

Ans. Of logs 16x16 with gallery & shed room. It is habitable at all seasons of the year.

Ques. 23: What is this land worth, and was it ever offered for sale?

Ans. \$2.00 per acre. No.

Ques. 24: When did claimant commence living upon this land?

Ans. In 1881.

Ques. 25: How much of said land has been broken, how much plowed since being broken, and how much put into crop each season? State kind of crops raised, their value, and number of seasons crops were raised.

Ans. From 10 to 22 acres. Corn & cotton. Do not know value of the crop. 8 seasons.

Ques. 26: Is said land in crops this season, or has it been prepared for cropping the coming season?

Ans. Yes.

Ques. 27: Do you believe that claimant intends to continue his residence on this land after making final proof, or does he intend to remove therefrom?

Ans. I do.

Ques. 28: Does claimant, with his family, reside on said land at the present time? You will explain how you know he has resided there, as you have heretofore stated.

Ans. They do. I know this from personal observation.

his  
CHILER x NESSMITH  
mark

## U. S. LAND OFFICE

Natchitoches, La.

Aug. 10, 1888.

I HEREBY CERTIFY, That Chiler Nessmith personally appeared before me; that he is a credible witness and has been satisfactorily identified before me by Augustus C. Kirkpatrick and that each question in the foregoing deposition was orally propounded to the said Chiler Nessmith and the foregoing answers severally given by him thereto before he signed the same and after being sworn to according to law; that I have called his attention to the laws and penalties against false swearing; and that the foregoing deposition was sworn to and subscribed before me this 10 day of August, A. D. 1888.

WILLIS HOLMES,

Register.

WE HEREBY CERTIFY that the within and foregoing testimony of claimant and witnesses has been carefully examined by us before transmittal to the General Land Office.

WILLIS HOLMES,

Register.

A. E. LEMEE,

Receiver.

Filed Oct. 12, 1888.

Marked "D"

WILLIS HOLMES,

Register.

180      HOMESTEAD, PRE-EMPTION AND  
COMMUTATION PROOF.

## Testimony of Witness.

(The testimony of two witnesses, taken separately, in addition to the testimony of claimant, is required in each case.)

(The testimony of witnesses must be taken at the same time and place before the same officer as claimant's final affidavit.) The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.

Question 1.—What is your true name (christian and surname), given in full, your age, residence, and present postoffice address? (Give description of land on which you reside, quarter section, township and range.)

Answer. Augustus C. KIRKPATRICK 36 Vernon Parish Walnut Hill P. O. NW $\frac{1}{4}$  of SE $\frac{1}{4}$  SEC. 11 T. 2 M., R. 7 W.

Ques. 2.—What is your present occupation and where and by whom have you been employed since 1881, the date of claimant's settlement on said tract?

Ans. Farming, for myself.

Ques. 3.—Are you related to claimant or in any way interested in this claim, or are you connected with him in business of any kind?

Ans. No. No. No.

Ques. 4.—How far from the residence of claimant, on said tract, do you reside, and how long have you lived there?

Ans. About 1 mile. 12 years.

Ques. 5.—Give the names and residences of two or more persons living nearer to the claimant of this tract than yourself? If none,—are nearer than you, give the names of two or more next nearest and state the land on which they reside:

Ans. B. T. HAGAN Walnut Hills P. O.  
Lemmel A. Tinsley, " " "

Ques. 6.—How long have you known Jasper J. Brown, the claimant for whom you appear as a witness, where has he been living since you first knew him up to the present time, and is he the identical person he represents himself to be?

Ans. About 9 years. In SEC. 13, T. 2, R. 7. He is.

Ques. 7.—Are you well acquainted with the land embraced in this claim? Give correct description thereof; also state the extent of your knowledge, and how you know what you affirm.

Ans. I am. NE $\frac{1}{4}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$ , SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Sec. 13, T. 2 N. R. 7 W. By seeing the land marks of the GOV. SURVEY—personal observation.

Ques. 8.—How often have you been on this tract of land since claimant's alleged settlement thereon, at what time or times, and when did you last see him on the land?

Ans. Frequently 3 or 4 times a year. Aug. 7/88.

181 Ques. 9.—Is said tract within the limits of an incorporated town, or selected site of a city or town, or used in any way for trade or business?

Ans. No.

Ques. 10.—State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Timbered farming land.

Ques. 11.—Are there any indications of coal, minerals, or salines on this land?

Ans. No. No. No.

Ques. 12.—Is it within any stock range or fence or other inclosure? If so, give the names of the parties owning it or in any manner controlling such inclosure or range.

Ans. No.

Ques. 13.—If the land is timber land, state whether the timber, or any portion thereof, and what portion, if any, has been cut or removed, and by whom?

Ans. It is timbered lightly & all is standing except that used for the farm fires & building.

Ques. 14.—What is this land used for, and who (if any one) besides the claimant is in any manner interested in or uses or controls the land or claims the timber thereon?

Ans. Farming—by claimant alone.

Ques. 15.—What has been claimant's occupation since



you first knew him, and where has he been employed, and by whom?

Ans. Farming in Sec. 13 for himself.

Ques. 16.—Has he had any other living or boarding place than on this land during the existence of his present claim? If so, state where he has been living or stopping?

Ans. No.

Ques. 17.—Does claimant's family reside on said land? When did they remove thereon? How long have they lived there, and do they still reside thereon? If not, where do they reside?

Ans. Yes. In 1881. Lived there ever since and still reside there.

Ques. 18.—Has claimant's family been absent from said land since moving thereon? If so, state how often, how long each time, and the cause of said absence or absences.

Ans. Never have been absent.

Ques. 19.—State in full and in detail all the facts within your knowledge as to claimant's actual residence upon this claim; when and how often you have seen him upon the land; what were the evidences that he actually lived on the tract; how long he has lived there, and whether he lives there now.

Ans. I have been on this claim frequently, have seen Jasper J. Brown clearing the land, fencing, cultivated crops on this land, and having his family living with him in a dwelling house that he built on this land. Being a near neighbor & frequent visitor I know these facts by personal observation.

Ques. 20.—If claimant has been absent from said land since his alleged settlement, state fully how often, when, how long each time, and for what purpose.

Ans. He never has been absent at all.

182

Ques. 21.—State in detail the character of the improvements; what they consist of, and when they were made; the value of each distinct improvement, fully describing the same; also whether they were made by the claimant or by some other person.

Ans. A dwelling house, value \$50. Smoke house, \$15. Crib \$10. All made by the claimant except the crib, built in 1881.

Ques. 22.—Give the size, construction, and material of claimant's house on said tract, and also state whether the same is habitable during all seasons of the year.

Ans. A log house 16x16 with galleries. It is habitable at all seasons.

Ques. 23.—What is this land worth, and was it ever offered for sale?

Ans. \$2.00 per acre. No.

Ques. 24.—When did claimant commence living upon this land?

Ans. In 1881.

Ques. 25.—How much of said land has been broken, how much plowed since being broken, and how much put into crop each season? State kind of crops raised, their value, and number of seasons crops were raised.

Ans. Commenced by clearing 10 acres & he now has 22 acres in corn & cotton. Average value of crops \$250. 8 Seasons.

Ques. 26.—Is said land in crops this season, or has it been prepared for cropping the coming season?

Ans. Yes.

Ques. 27.—Do you believe that claimant intends to continue his residence on this land after making final proof, or does he intend to remove therefrom?

Ans. I do.

Ques. 28.—Does claimant, with his family, reside on said land at the present time? You will explain how you know he has resided there, as you have heretofore stated.

Ans. They do. By being there and seeing them at home on this land.

AUGUSTUS C. KIRKPATRICK.

183

U. S. LAND OFFICE,  
Natchitoches, La.

Aug. 10, 1888.

I HEREBY CERTIFY, That Augustus C. Kirkpatrick personally appeared before me; that he is a credible witness and has been satisfactorily identified before me by Chiler Nessmith and that each question in the foregoing deposition was orally propounded to the said Augustus C. Kirkpatrick and the foregoing answers severally given by him thereto before he signed the same and after being sworn to according to law; that I have called his attention to the laws and penalties against false swearing; and that the foregoing deposition was sworn to and subscribed before me this 10 day of August, A. D. 1888.

WILLIS HOLMES,  
Register.

WE HEREBY CERTIFY that the within and foregoing testimony of claimant and witnesses has been carefully examined by us before transmittal to the General Land Office.

WILLIS HOLMES, Register.  
A. E. LEMEE, Receiver.

Filed Oct. 12, 1888.

Marked "E"

Willis Holmes,  
Register.

184 IN THE UNITED STATES LAND OFFICE,  
Natchitoches, La.

IN THE MATTER OF THE APPLICATION OF JAS-  
PER J. BROWN OF VERNON PARISH, LA., TO ENTER  
UNDER THE PROVISIONS OF SEC. 2 OF ACT OF

FEBY. 8th, 1887, AND THE HOMESTEAD LAWS THE NE $\frac{1}{4}$  OF NW $\frac{1}{4}$ , N $\frac{1}{2}$  OF NE $\frac{1}{4}$  AND SW $\frac{1}{4}$  OF NE $\frac{1}{4}$  SEC. 13, T. 2 N, R. 7 W. La. Mer.

**ON THE OPPOSITION OF THE NEW ORLEANS PACIFIC RAILWAY CO. OF NEW ORLEANS:**

On the 12th day of October at 10 o'clock A. M., Jasper J. Brown with his witnesses in support of his application appeared at the U. S. Land Office at Natchitoches, La.

The New Orleans Pacific Ry. Co. did not appear nor was it represented by counsel, though duly notified hereof as will appear from the documents filed herein and marked A.

Testimony of opponent, the objection of the New Orleans Pacific Railway Co. dated at New Orleans, La., Sept. 1st. 1888, filed herein and marked "B".

Evidence of claimant, testimony of claimant, Jasper J. Brown, taken before Willis Holmes, Register, at Natchitoches, La., on the 10th day of August, 1888, filed herein and marked document "C".

Testimony of witness Chiler Nessmith, taken before same officer on the same day filed herein and marked "D".

Testimony of Augustus C. Kirkpatrick taken before same officer on the same day filed herein, marked document "E".

Jasper J. Brown claimant, being first sworn, says that he is the same person who on Aug. 10th, 1888, applied to be allowed to enter under Sec. 2, Act of 8th, Feby. 1887, the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of NE $\frac{1}{4}$  of Sec. 13, T. 2 N. R. 7 W, and am the identical person who gave evidence as shown in the document filed herein and marked "C". I took possession of and made a settlement on this land in 1881 by building a dwelling and smoke house on this land and cleared some land and I have lived on this land continuously ever since 1881, and have cultivated the same in crops of corn and cotton every year and have made it my only home. I have examined the testimony given on

185        AUG. 10th, 1888, as shown in document "C"  
             and now find it to be correct and true and adopt  
             it as my evidence in this case and corroborate all  
 the statements therein made.

JASPER J. BROWN.

Sworn to and subscribed before me  
 this 12th day of October, 1888.

WILLIS HOLMES,

Register.

186        CHILER NESSMITH, being first duly  
             sworn, says that he is a resident of Vernon Par-  
 ish, Walnut Hills, P. O. Age 50 years. That he has known  
 Jasper J. Brown for about 11 years, during which time said  
 Brown lived in Vernon Parish farming. That Jasper J.  
 Brown, the claimant, took possession of and settled on the  
 NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Sec. 13,  
 T. 2 N. R. 7 W. in the year 1881; that he built a dwelling  
 and smoke house and cleared land which he has cultivated  
 in crops of corn and cotton every year since 1881. That  
 said Brown has lived with his family on this land all the  
 time since 1881 and lives there now. That he has had no  
 other house or place of abode. I know these facts by per-  
 sonal observation, living about 2 miles from Jasper J.  
 Brown. I am a frequent visitor and have seen him and his  
 family at home frequently. I have examined the evidence  
 which I gave on the 10th Aug. 1888, and corroborate the  
 same in all its details and adopt it as evidence in this case  
 this day.

his

CHILER x NESSMITH.

mark

Sworn to before me this 12th day of  
 Oct. 1888.

WILLIS HOLMES,

Register.

187            Augustus C. Kirkpatrick, being first duly sworn, says that he is a resident of Vernon Parish, Walnut Hills, P. O. and that he has known Jasper J. Brown for about 12 years, during which time he has lived in Vernon Parish, farming, and that in the year 1881 Brown occupied and improved the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Sec. 13, T. 2 N., R. 7, and built on this land a dwelling house and smoke house and cleared about altogether 18 acres, which lands he has cultivated in corn and cotton each year since 1881. That Jasper J. Brown has lived on this land continuously ever since 1881, and has had his family living with him and had no other house or place of residence. I live about 1 mile from Brown and know these facts by personal observation, visting him quite often and seeing him and his family living on this land. I have examined the testimony given by me on the 10th day of August, 1888, and now substantiate the same in every detail and adopt it as my evidence now in this case.

AUGUSTUS C. KIRKPATRICK.

Sworn to and subscribed before me  
this 12th Oct. 1888.

WILLIS HOLMES,  
Register.

TESTIMONY CLOSED.

188

# REPORT.

This is an application to enter lands under the homestead laws as provided in Section 2 of the Act of Congress approved 8th day of Feby. 1887. The land applied for being the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , of Sec. 13, T. 2 N. R. 7 W., La. Mer. The same land being included in the selection of the New Orleans Pacific Railway Co., made March 3rd. 1885, and approved.

The testimony shows that the claimant, Jasper J. Brown, took possession of this land in the year 1881, and

made a settlement thereon and placed substantial improvements upon the land and has occupied the same as a home and has cultivated a portion of the land in crops of corn and cotton each year since 1881, and has made it his only place of residence and home for his family.

After examining the testimony and hearing the evidence of the witnesses, we are of the opinion that the claimant has established his right to be allowed to enter the land applied for and we therefore do now recommend that Jasper J. Brown be allowed to enter under the homestead laws the land he has applied for, namely, the NE $\frac{1}{4}$  of NW $\frac{1}{4}$ , N $\frac{1}{2}$  of NE $\frac{1}{4}$  and SW $\frac{1}{4}$  of NE $\frac{1}{4}$ , Sec. 13, T. 2 N. R. 7 W. La. Mer., and that the opposition of the New Orleans Pacific Ry. Co. be dismissed.

WILLIS HOLMES,  
Register.  
A. E. LEMEE,  
Receiver.

United States Land Office,  
Natchitoches, La., October 12-1888.

189            IN THE U. S. LAND OFFICE,  
Natchitoches, La.

In the Matter of:	}	On Notice of Dec. 5, '88.
CLAIM OF		
JASPER J. BROWN.		

APPEAL BY THE NEW ORLEANS PACIFIC RAILWAY  
COMPANY  
To  
THE REGISTER AND THE RECEIVER U. S. LAND  
OFFICE,  
Natchitoches, La.

Please take notice that the New Orleans Pacific Railway Company hereby appeals to the Commissioner of the



General Land Office from the decision rendered by your office on the 5th day of Decbr. 1888 in favor of the claimant above named, and on the following grounds:

1st. That the decision hereby appealed from is contrary to the law- and the evidence in the case.

2nd. That the claimant has never complied with the acts of Congress, U. S. Rev. Stat. 2257-2317, in such manner as to lay a legal foundation for his claim as against appellant.

3rd. That the claimant at the time of definite location of the New Orleans Pacific Railway as fixed by the second section of the Act of Congress of February 8th, 1887, entitled "An Act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands and for other purposes", had not made any of the declaratory statements, proofs, payments or tenders of payment, required by law to lay a foundation for his claim as against appellant.

Yours respectfully,

THE N. O. PACIFIC RY. CO.,

E. B. Wheelock, Prest.

Howe & Prentiss, Attys.

New Orleans La.

December 24th, 1888.

Rec'd & filed Dec. 29, 1888.

WILLIS HOLMES,

Register.

190

Walnut Hill, La. Jany. 7th, 1889.

To the Hon. Commissioner,

General Land Office,

Washington, D. C.

Now comes Jasper J. Brown of Walnut Hill, Vernon Parish, Louisiana, who answers to the appeal taken by the

N. O. Pacific Ry. Co. and denies any and all allegations made in the said appeal and he further says that he has fully complied with all the requirements of the homestead laws and more particularly the act of the 8th Feb. 1887, under the 2nd Section of which he has filed his application for the land in controversy and has made full and complete proof of his compliances with the laws and filed the same testimony with his application, to which he now makes reference and prays to be allowed to complete the entry of this land and that he be quieted in his title to same by a homestead patent.

Respectfully submitted,

JASPER J. BROWN.

Filed Jany. 15/89.

WILLIS HOLMES,

Register.

191 GENERAL LAND OFFICE DIVISION "A"

Jan. 2, 1892.

In the Department of the Interior.

JASPER J. BROWN

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY.

NE $\frac{1}{4}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  NE $\frac{1}{4}$  & SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 13, T. 2 N.  
R. 7 W. Louisiana Meridian.

#### APPEAL.

THE NEW ORLEANS PACIFIC RAILWAY COMPANY APPEALS FROM THE DECISION OF THE COMMISSIONER OF THE GENERAL LAND OFFICE, IN THE ABOVE ENTITLED CAUSE, DATED DEC. 1, 1891, AWARDING THE LAND TO THE ALLEGED SETTLER.

**ERROR ASSIGNED:** Holding that the land was excepted from the grant to the Company by the proviso to Section 2, Act of February 8, 1887.

### ARGUMENT.

It is submitted that the land falls within the terms of Section 4 of said Act, enforcing the Blanchard-Robertson agreement.

**FURTHER,** Part of this land was patented in 1889, after the Act of February 8, 1887, Sec. 6 of which only refers to patents "that have already been issued", and therefore does not cover this case. The Act of Mar. 3, 1887, only refers to laws that have been "heretofore erroneously patented". Title to the tract has passed from the Government.

D. A. McKNIGHT,  
Attorney for Railway Company.

District of Columbia, to-wit:

Personally appeared before me D. A. McKnight, to me personally known, and made oath that he has forwarded a copy of the foregoing appeal and argument to the claimant.

Witness my hand and Notarial Seal this 30 day of December 1891.

192

(SEAL)

HENRY W. REED,  
Notary Public.

Registered Letter No. 4904 P. O. Washington, D. C.  
Received Dec. 30, 1891 of D. A. McKnight 1416 F a Letter  
addressed to Jasper J. Brown, Walnut Hill, La., Station C.  
—Henry Sherwood, P. M. per Durfur.

266

193

GENERAL LAND OFFICE

"C"

515

Received Jan. 2, 1892.

Jan. 2/92.

JASPER J. BROWN

VS

NEW ORLEANS PACIFIC RAILWAY COMPANY.

6333

Appeal by the Company to the Secretary.

Department of the Interior.—L. & R. R. Div.

Received Jan. 21, 1892.

8/7641

2

Slosson

D. A. McKNIGHT,  
Attorney.

F.  
29

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427

194

End  
R.J.F.M.  
A. P. R.

W. O. C.  
E. C. S.  
W. J. B.  
W. C. E.

## DEPARTMENT OF THE INTERIOR,

General Land Office,

F.

Washington, D. C., December 1, 1891.

8-7641.

Address only the Commissioner of the General Land Office.

JASPER J. BROWN,

vs.

THE N. O. PACIFIC RY. CO.

Involving the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  NE $\frac{1}{4}$  and SW $\frac{1}{4}$  NE $\frac{1}{4}$ ,  
Sec. 13, T. 2 N., R. 7 W. La. Meridian, Louisiana.

Register and Receiver,  
Natchitoches, La.

Sirs:—

I have considered the above entitled case. The tracts are within the thirty miles indemnity limits ordered withdrawn for the New Orleans Baton Rouge and Vicksburg, now New Orleans Pacific Railway Company, under Act of Mch. 3, 1871. The tracts were selected by the New Orleans Pacific Railway Company December 29, 1883, under said act, and the N $\frac{1}{2}$  NE $\frac{1}{4}$  and NE $\frac{1}{4}$  NW $\frac{1}{4}$  were patented August 8, 1889. On August 10, 1888, Brown filed his application to make homestead entry of the tracts in question, and submitted an affidavit alleging settlement thereon in 1881. The second section of the act approved February 8, 1887, confirmed to the New Orleans Pacific Railway Company that portion of the grant by act approved Mch. 3, 1871, not declared forfeited, which includes the tracts in question, but provided: "That all of said land occupied by actual settlers, at the date of definite location of said road, and still remaining in their possession, or in possession of

their heirs or assigns, shall be held and deemed excepted from said grant; and shall be subject to entry under the public land laws of the United States." This act applies to patented as well as unpatented lands.

The Department has decided the date of definite location as fixed by said act of February 8, 1887, affecting the land in question to be Nov. 17, 1882. Under instructions from this office by circular letter of June 6, 1887, you ordered a hearing in the matter, to give the parties an opportunity to present their claims, and after due notice thereof, had been given to all parties in interest, a hearing was had October 12, 1888, and the testimony together with your joint opinion, transmitted with your letter of April 18, 1889. Your decision being in favor of the applicant, the company appealed.

The testimony shows that Brown began his settlement on the land in the Spring of 1881, and continuous residence and improvement thereafter.

As shown by the testimony, Brown was at the date of definite location of the road an actual settler upon and occupant of the land, and his occupancy and improvement have been continuous. He therefore comes clearly within, and his claim is confirmed by the second section of the Act of February 8, 1887, aforesaid. The claim of the company is accordingly rejected; and its selection of the unpatented tract held for cancellation, subject to the right of appeal within sixty days. Should this decision become final, the proper steps will be taken to recover title to the tracts which have been patented to the company, to the end that Brown may be given title to the land in its entirety. Advise Brown hereof. The attorney for the company will be advised by this office.

Very respectfully,

THOS. H. CARTER,  
Commissioner.

196

DEPARTMENT OF THE INTERIOR,

F.L.C.

F.W.C.

J.L.M'C

L.L.M'C

Vo/ 17, No. 323.

Washington.

Jan. 19/93.

NEW ORLEAN PACIFIC RY. CO.

vs.

JASPER BROWN.

The Commissioner of the

General Land Office.

Sir:

On June 18, 1892, you transmitted the papers in the appeal of the New Orleans Pacific Railway Company from your decision of December 1, 1891, rejecting its claim to the NE $\frac{1}{4}$  of the NW $\frac{1}{4}$ , the N $\frac{1}{2}$  of the NE $\frac{1}{4}$  and the SW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Sec. 13, T. 2 N. R. 7 W., Natchitoches Land District, Louisiana, and awarding Jasper Brown the right to make homestead entry of the land.

A part of the land has been patented to said company. A hearing was had to determine priority of right. Your decision finds that the homestead entryman was an actual settler and resident on the land at the date of the definite location of the road. The company has therefore withdrawn its appeal, in accordance with the first and third sections of its agreement, embodied in departmental letter of December 16, 1892 (15 L. D. 576).

Action by the Department being thus rendered unnecessary, the papers in the case are herewith returned.

You will at an early date call upon the company to restore the title to the United States, as stipulated in said agreement.

Very respectfully,

GEO. CHANDLER,  
First Assistant Secretary.



197      Evd  
           R.J.F.M.

W.J.B.  
 W.C.E.

A.P.R.      DEPARTMENT OF THE INTERIOR,  
 8-7641                  General Land Office,

F.                  Washington, D. C. March 2, 1893.

Address only the Commissioner of the General Land Office.

JASPER J. BROWN

vs.

THE N. O. P. RY. CO.

Involving the NE $\frac{1}{4}$  NW $\frac{1}{4}$  N $\frac{1}{2}$  NE $\frac{1}{4}$  and SW $\frac{1}{4}$  NE $\frac{1}{4}$   
 Sec. 13, T. 2 N., R. 7 W. Louisiana.

Register and Receiver,  
 Natchitoches, La.

Sirs:

I herewith enclose Departmental letter of January 19th, 1890, returning without action the papers in the above entitled case, the company having withdrawn its appeal under the first and third sections of its agreement embodied in departmental letter of December 16th, 1892 (15 L. D. 576), The Company's selection of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  is this day canceled in compliance with office decision of Dec. 1, 1891; the remaining tracts having been patented to the company, it will be called upon at an early date to revest the title in the United States in order that Brown may be able to perfect his entry to the land in its interity under the homestead law. Advise Brown hereof. The attorney for the Company will be advised by this office.

Very respectfully,

WM. STONE,  
 Commissioner.

## Government's Exhibit D.

(Relative to Suit 16)

"These exhibits show that on February 27, 1901, the United States Government, acting through The Attorney General and the United States Attorney for the Western District of Louisiana, filed its bill in Equity, entitled: "United States of America vs. New Orleans Pacific Railway Company, et al." the same being No. 16 on the Equity docket of the United States then Circuit now District Court for the Western District of Louisiana.

This bill was a suit by the Government against the New Orleans Pacific Railway Company, a Louisiana corporation, alleged to be within the jurisdiction of the Court, and the following non-residents of the State of Louisiana: John F. Dillon and Amos H. Calef, residents of New York City; George J. Gould, resident of New York and New Jersey, sued individually and as heir and executor of Jay Gould, deceased; Edwin Gould; Howard Gould and Frank Gould, residents of the City of New York, sued individually and as heirs of Jay Gould; Anna Gould, wife of Count Boni de Castelane, a resident of Paris; Daniel F. Marsh, a resident of the State of Connecticut; A. Baldwin, a resident of New Orleans; J. B. Watkins, a resident of Lawrence, Kansas; and the following, whose residences were unknown, Charles Paulet, John F. Eddy and William D. Dewing.

In the bill, the Government prayed for a decree cancelling patents to some hundred and fifty tracts of land, including the land in controversy in the case at bar, alleging that said tracts were erroneously patented to the said railway company under its grant from the United States, on the ground that said lands were, at the time of the definite location of the railroad, and at the date of the passage of the Act of Congress confirming the grant—February 8, 1887—occupied by actual settlers named in the bill of complaint and for which reason it was claimed the said lands were excepted from the grant, and the patents therefor issued erroneously.

Attached to the said bill of complaint was an order of the Court dated February 25, 1901, directing that those of

the defendants, naming them (omitting, however, the New Orleans Pacific Railway Company), who were non-residents of the Western District of Louisiana, be ordered to "appear, plead and answer or demur by the \_\_\_\_\_ Monday of \_\_\_\_\_ 1901; and that this order be served upon them personally wherever found." The blanks in this order, in which were to be inserted the day of the month and the name of the month on which the said defendants were commanded to appear and answer, were not filled in but were left blank, and such order did not include among such non-resident defendants, the New Orleans Pacific Railway Company, which, however, as a matter of fact, was domiciled in the City of New Orleans, without the Western District of Louisiana.

A subpoena in chancery in said suit No. 16 was issued on the 27th day of February, 1901, by the Clerk of the United States Circuit Court for the Western District of Louisiana, directed to the United States Marshal for the Eastern District of Louisiana, commanding him to summon various defendants, including: "The New Orleans Pacific Railway Company, New Orleans, La.; Robert Strong, General Agent, New Orleans, La.; Charles M. Green, Receiver of the New Orleans Pacific Railway Company, New Orleans, La., to appear before the Honorable Judge of the Fifth Judicial Circuit of the United States of America at a Circuit Court to be holden at the City of Alexandria, La., on the first Monday of April, 1901." Robert Strong, General Agent, and Charles M. Green, stated in the subpoena to be officers and representatives of the New Orleans Pacific Railway Company, are not mentioned in the bill in Equity nor in the order of the Court directing service above noted. The return on this subpoena shows personal service on Charles M. Green, Receiver, and service on Robert Strong, General Agent, "by handing the same to W. R. Elliott, Secretary of said Company, in person at the office of said Company," on the 28th day of February, 1901.

199

On March 27, 1901, several defendants, including Charles M. Green, Receiver of the New Orleans Pacific Railway Company, and the New Orleans Pacific Railway Company, filed in the United States District Court for

the Western District of Louisiana in this cause a petition praying for limited appearance, upon which an order was entered by the Court allowing the same and authorizing them to make "a limited appearance in this cause for the purpose of contesting the legality and regularity of the process issued against them in the said cause, and the regularity and validity of the service thereof," which said appearance was duly made on the same date.

On the 25th day of May, 1903, the following entry was made on the minutes of the United States District Court for the Western District of Louisiana, Alexandria Division: "United States vs New Orleans Pacific Railway Company, No. 16. This cause came on at this time to be heard upon the motion of defendants to dismiss the suit for want of proper service, and after argument of counsel the Court ordered that supplemental process issue and be served upon the defendants, to-wit, an order of the Court conforming to the first order with change of dates, directing them to appear." The New Orleans Pacific Railway Company was not named in this order, but Charles M. Green, Receiver, and Robert Strong, Vice-President, were served on June 29, 1903, with a copy of an order of Court in this cause ordering and commanding them to appear and answer by the first Monday of September, 1903, the said order reciting their non-residence from the jurisdiction of the Court, and commanding the service upon them wherever found.

On September 25, 1903, by leave of the Court obtained, various defendants, including the New Orleans Pacific Railway Company and Charles M. Green, Receiver, made a limited appearance in this cause for the purpose of contesting the legality and validity of the process served upon them, and for that purpose only, alleging themselves to be non-residents of the Western District of Louisiana, moved the Court to vacate, annul and set aside the process served upon them, on the ground that no valid order had ever been entered commanding them to appear and plead to said bill; that the only order ever entered and signed upon said bill was the original order of February 25, 1901, which left blank the day of the month and the name of the month upon which they were to appear and answer, and that what purported to be

a copy of an order commanding them to appear and answer on the first Monday of September, 1903, was not in fact a valid order of this Court, for the reason that no such order had ever been entered and signed by the Court (what had actually been done was that the blank dates in the original order had been filled in and a copy thereof certified and served), and that such service was therefore illegal and void, and not such service as to compel defendants to appear and plead to said bill.

On May 23, 1904, the following minute was entered in the minutes of the United States Circuit Court for the Western District of Louisiana: "United States vs New Orleans Pacific Railway Company, No. 16. In this cause the Court sustained the motion to quash the service made upon the defendants, and ordered that the defendants named in the original order be cited to set forth therein to plead, answer or demur on the second Monday of September, 1904, at the City of Alexandria."

On May 25, 1904, an original order of Court was entered commanding the defendants named in the first order had upon this bill to appear and answer on the second Monday of September, 1904, in the City of Alexandria, in the Western District of Louisiana, and that this order be served upon said defendants wherever found; a copy of this order was served personally by the United States Marshal for the Eastern District of Louisiana on Robert Strong, Vice President of the New Orleans Pacific Railway Company on June 7th, 1904, and on Charles M. Green, Receiver of the  
 200 New Orleans Pacific Railway Company on June 20th, 1904.

On August 26th, 1904, various defendants, including the New Orleans Pacific Railway Company, through their solicitors, made appearance in this cause, and on the same date filed a general demurrer to the Government's bill.

On October 24, 1904, the New Orleans Pacific Railway Company filed an amended demurrer, by leave of the Court had, alleging as additional grounds for the dismissal of the suit, that the plaintiff was not entitled to maintain the action or have the relief prayed for, inasmuch as it appeared on

the face of the record that the suit was not brought within five years from the passage of an act of Congress entitled: "An Act to provide for the extension of time within which suits may be brought to vacate and annul patents and for other purposes," approved March 2, 1896 (29 Statutes at Large, c. 39, p. 42), which demurrers, together with similar demurrers filed by the other defendants, were by the Court on the 17th day of March, 1905, overruled, and the said defendants assigned to answer the bill on the 22nd day of May, 1905, at Alexandria, La.

Various answers and pleas were filed on behalf of the several defendants, and on May 22, 1905, the New Orleans Pacific Railway Company filed a plea to the whole bill, setting up, in bar of the Government's action, the act of Congress approved March 2, 1896, (29 Statutes at Large, 42), especially averring that the time provided in such statute, within which the Government might bring a suit to cancel a patent to lands erroneously issued under any railroad grant had elapsed prior to the 25th day of May, 1904, not until which date, it was contended, was the Government's suit herein brought or this defendant served with valid legal process so as to interrupt the running of said prescription, and that prior to September, 1904, no appearances or pleadings had been made in the cause on behalf of this defendant, by which the said prescription might be interrupted or the Court acquire jurisdiction over this defendant.

On February 19, 1906, the Government, through the United States Attorney, filed a replication of the United States of America, complainant, to this plea of the New Orleans Pacific Railway Company, defendant; November 6, 1913, the United States Attorney filed a motion to strike out the plea of the New Orleans Pacific Railway Company filed on May 22, 1905, as above set forth, on the ground that the same was a mere repetition of the amended demurrer of said Company, which had been filed on October 24, 1904, and overruled by the Court.

On November 6, 1913, the said motion of the Government to strike out the plea of the New Orleans Pacific Railway Company was overruled by the Court and the said plea referred to the merits of the cause, with leave to incorporate



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200 New Orleans Pacific Railway Company on June 20th, 1904.

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On November 6, 1913, the said motion of the Government to strike out the plea of the New Orleans Pacific Railway Company was overruled by the Court and the said plea referred to the merits of the cause, with leave to incorporate

the same in its answer, to be filed within forty days, within which time, to-wit, on December 16, 1913, the New Orleans Pacific Railway Company filed its answer.

201

GOVERNMENT'S EX. E.

COMMISSIONER SPARKS TO REGISTER  
& RECEIVER,

NEW ORLEANS, LA.

JUNE 6TH, 1887.

LETTER FROM H. L. MULDROW,  
ACTING SECRETARY,

TO

REGISTER AND RECEIVER.

"I have to call your attention to the act of Congress approved February 8, 1887 (copy attached), entitled "An act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge & Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes."

The first section of the act declared a forfeiture of, and restored to the public domain, all lands lying east of the Mississippi River which were granted to the New Orleans, Baton Rouge & Vicksburg Railroad Company by act of March 3, 1871, and also of all those on the west side of the river lying opposite to and coterminous with that part of the road which was completed on the 5th day of January, 1881, or that portion between New Orleans and White Castle.

The second section confirms to the New Orleans Pacific Railroad Company the title to the lands granted by said Act of March 3, 1871, and not declared forfeited by the 1st section, but provides that all of the lands that were occupied by actual settlers at the date of the definite location of the road and were still in their possession or in the possession of their heirs or assigns, should be held and deemed excepted from the grant and subject to entry under the laws of the United States. This provision applies to the patented as well as to the unpatented lands.

The department has decided that the dates of the definite location are specifically determined by the act of February 8, 1887, to-wit: October 17, 1881, for the portions of the road from a point in Township 2 N., Range 1 East, to a point in Township 4 N., Range 2 W., and from Shreveport to a point in Township 10 N., R. 12 W., and November 17, 1882, for the balance of the road. The 20-mile lateral limits of the grant and the terminal limits of each of the sections as definitely located and constructed are shown by yellow shading upon the diagram furnished you with office letter of October 15, 1883. When claimants under this section present proper applications to enter, you will notify the company thereof, and allow thirty days in which to file objections. If no objection is made within the time allowed, you will allow the entry, and in making your returns thereof you will transmit, with the entry papers, the documents showing the previous action taken.

If the company should object, you will order a hearing in the usual manner, and, upon the conclusion of the trial, transmit the testimony to this office accompanied by your joint opinion thereon.

The third section provided that the confirmation of the grant made by the second section should take effect when the company should accept the provisions of this act in the manner prescribed, and agree to discharge all the duties and obligations imposed by the act of March 3, 1871.

The acceptance and agreement on the part of the company were filed with the Secretary of the Interior, April 20, 1887, and the relinquishment and confirmation of the grant provided for in the second section of the act went into effect on that day.

The fourth section directs the Secretary of the Interior to establish such rules and regulations, in issuing patents for the lands confirmed to the company by this act, as will enable persons who were in actual occupancy of any portion thereof on December 1, 1884, and who are qualified pre-emption or homestead claimants, to secure title to the land held by them not to exceed one quarter in quantity and not less than one-sixteenth of a section, on payment to the company at the rate of two dollars

per acre for the land occupied; one third to be paid in cash and the balance in such equal annual installments as the Secretary of the Interior shall prescribe.

The fifth section directs the Secretary of the Interior to make all needful rules and regulations for carrying this action into effect, and authorizes him to direct that payments for the lands purchased under the fourth section may be made in any number of annual installments, not exceeding four, from the date of the sale, with interest thereon, not exceeding six per centum per annum.

Upon the receipt of any proper application to purchase under the fourth section of the act, you will notify the company thereof and allow thirty days within which to file objections.

If no objection is made the applicant will be held and deemed to have a valid claim and right of purchase in the land applied for, and you will so notify the company. Should the company object, you will order a hearing and proceed as directed under section 2.

The sixth section of the act authorizes and instructs the Secretary of the Interior to apply the provisions of the second, third, fourth and fifth sections to any lands that have been patented under the railroad grant of March 3, 1871, and to protect any and all settlers on said lands in all of their rights under said sections.

In all cases under section 2 where the rights of entry under the laws of the United States shall have been fully established to lands which have been patented to the company, the latter will be required to reconvey such lands to the United States, to the end that no cloud may rest upon the title of the entryman.

In cases where the right of purchase under the fourth section of the act shall be established, the railroad company will be required, either to convey the land to the applicants upon receipt of the first payment, and secure itself for the deferred payment by liens upon the lands sold, or to enter into such contracts to convey the lands upon receipt of the final installment paid in the manner below prescribed, as shall be satisfactory to this office.

The fourth section prescribed that purchasers thereunder shall pay one-third of the purchase money in cash. Under the authority given the Secretary of the Interior, the balance of the purchase money shall be paid in four equal annual installments from the date of the sale and interest on deferred payments shall be at the rate of six per centum per annum.

Purchasers coming within the provision of this section may at any time make payment of the whole, or any equal annual installment of the purchase money.

Application to enter under the second section, and to purchase under the fourth section, should be accompanied by the corroborated affidavit of the claimant, setting forth the facts respecting his settlement, and residence upon, and cultivation of the land claimed.

Approved June 8, 1887.

H. L. MULDROW,  
Acting Secretary.

203 GOVERNMENT'S EX. F.

CIRCULAR—ACT OF MARCH 3, 1887.

DEPARTMENT OF THE INTERIOR,  
GENERAL LAND OFFICE,

Washington, D. C., February 13, 1889.

REGISTERS AND RECEIVERS, UNITED STATES  
LAND OFFICES:

Gentlemen: The following instructions under the act of Congress approved March 3, 1887 (24 Stat., 556), are forwarded for your guidance.

#### THE FIRST SECTION

Directs that all railroad land grants not adjusted heretofore shall be adjusted immediately, that is without unnecessary delay. The duties thereunder pertain to the General Land Office and Department of the Interior.

#### THE SECOND SECTION

Provides for the recovery by the United States of title to lands which from any cause have been erroneously cer-

tified or patented "to or for the use or benefit of any company" on account of a railroad grant, whenever the fact may be ascertained that a certificate or patent has been erroneously issued, and prescribes the duties of the secretary of the Interior and Attorney-General in connection therewith.

### THE THIRD SECTION

Provides "That, if in the adjustment of said grants, it shall appear that the homestead or pre-emption entry of any bona fide settler has been erroneously cancelled on account of any railroad grant, or the withdrawal of public lands from market, such settler, upon application, shall be reinstated in all his rights and allowed to perfect his entry by complying with the public land laws: PROVIDED, that he has not located another claim or made an entry in lieu of the one so erroneously canceled; and PROVIDED, also, that he did not voluntarily abandon said original entry; and PROVIDED FURTHER, that if any of said settlers do not renew their application to be reinstated within a reasonable time, to be fixed by the Secretary of the Interior, then all such unclaimed lands shall be disposed of under the public land laws, with priority of right given to bona fide purchasers of said unclaimed land, if any, and if there be no such purchasers then to bona fide settlers residing thereon."

Three classes of persons are provided for under this section.

First. Bona fide settlers whose homestead or pre-emption entries have been erroneously cancelled on account of a railroad grant or withdrawal.

Second. Bona fide purchasers of such unclaimed lands.

Third. Bona fide settlers residing thereon.

The rights of the several classes to the lands referred to in the section are successive in the order stated in the section; the first in right is the homestead or preemption settler whose entry has been wrongfully canceled. If he elects to assert his right, and has not been disqualified by locating another claim or making another entry in lieu of

the entry erroneously cancelled, his right is absolute, and the successive rights of the remaining two classes cannot attach if he lawfully asserts his claim. If he fail to claim the land, or is disqualified under the act, the second class of persons, who are the bona fide purchasers of the land unclaimed by him, attach, and have precedence over the third class. The bona fide purchasers here referred to are those who, without knowledge of wrong or error, have purchased from the railroad company lands which have been previously entered by a preemption or homestead settler, whose entry has been erroneously canceled, as described in the first clause of the third section, and which land the preemption or homestead settler did not elect to claim after the recovery by the proceedings prescribed by the second section of the act.—ATTORNEY-GENERAL'S OPINION, Nov. 17, 1887. 6 (L. D., 272).

204 Parties of the first class desiring to avail themselves of the benefits of this section should present their applications without unnecessary delay, after notice of intention as required by the act of March 3, 1879, in pre-emption and homestead cases. The application must in every instance be accompanied by proof showing:

1. The facts respecting the date of the applicant's settlement, duration of residence, and value of improvements upon the public land.

2. Whether he has located on any other claim under any of the laws of the United States authorizing settlements upon public lands.

3. Whether he has abandoned the land embraced in his canceled entry or filing, if so, the cause which led to the abandonment.

4. Whether any other person or persons are residing upon the land.

5. That such persons as may be so residing upon the land have been notified of the intention of the claimant to apply for the re-instatement of his filing or entry, and the manner of giving such notice must be shown.



Should an adverse claimant appear to dispute or contest the right of re-instatement proceedings will be had in accordance with the Rules of Practice as in ordinary contests.

While the act contains no provisions relative to persons whose entries or filings have not been canceled, but whose lands have been certified, or patented on account of railroad grants, it follows as a matter of course, that their rights should be protected, and the mode of procedure in such cases will be the same as in the cases where cancellation has been made, except that the parties should apply to make final proof and payment instead of for re-instatement of entry; but in such case proceedings will be deferred until the title has been restored to the United States as provided by Section two of said act. The instructions of Nov. 22, 1887 (6 L. D., 276), under this section, are hereby modified in accordance with the foregoing.

Proceedings on applications by parties of the second class will be governed by instructions under the fourth section.

Applicants of the third class will be required to submit evidence, in addition to that relating to their own settlement or claims, showing whether there are persons of the first or second class residing upon, in possession of, or claiming lands.

#### THE FOURTH SECTION

Relates to all lands which have been erroneously certified or patented on account of railroad grants, except those mentioned in the third section, and by the grantee company sold to citizens or to persons who have declared their intention to become citizens of the United States; and provided that after the title to such lands has been restored to the United States as contemplated by the second section of the act, persons who have purchased such land in good faith, their heirs or assigns, shall be entitled to the lands, upon making proof at the proper land office, whereupon patents shall issue relating back to the date of the original certification or patenting, and the grantee company will be required to pay the United States for such lands at the price

at which other similar lands are legally held by the Government.

The purchaser from the company is not debarred by the act from recovering from the company the amount of purchase money paid by him less the amount paid by the company to the United States for the land.

A mortgage or pledge of such lands is not a sale within the intention of the act.

No forfeiture is declared by this act against any land grant for conditions broken (and no entry is authorized for lands legally within such grant), but no rights of the United States on account of breach of contract are waived by the act.

An applicant for land under this section will be required to publish notice of his intention to make proof as in preemption and homestead cases, and the proof must show:

1. That he is, or has declared his intention to become, a citizen of the United States.

2. That he is a bona fide purchaser from the company or some person claiming title under it, and the character of the instrument conveying the land to him.

3. The amount of purchase money paid to the company.

4. What part, if any, of the purchase money paid to the company has been refunded to him or any person acting as his agent.

205 5. Whether he has instituted proceedings against the company for the recovery of any portion of the purchase money; if so, for what portion.

6. The value and character of the improvements, if any, made or acquired by him upon the land.

7. Whether there is any person of the first class under the third section entitled to the right of entry under the preemption or homestead laws.

Upon the submission of satisfactory proof as prescribed above, the register will issue certificate, in duplicate—numbered in the regular cash series—with annotations thereon

showing that the entry is allowed without payment under the fourth section of the act of March 3, 1887. (24 Stat. 556).

### THE FIFTH SECTION

Relates to lands within the limits of railroad grants, coterminous with constructed portions of the lines of road, not conveyed on account of, but excepted from, the grants.

Under this section, when the company has sold to citizens of the United States, or persons who have declared their intention to become such citizens, the numbered sections prescribed in the grant and coterminous with the constructed portions of the road, within either the granted or indemnity limits, and which upon the adjustment of the grant are shown to be excepted from the operation of the grant, it shall be lawful for such purchasers (if their purchases are bona fide) to purchase said land from the Government by payment of the government price for like lands, unless said lands were at the date of purchase in the bona fide occupancy of adverse claimants under the preemption or homestead laws, in which case the preemptor or homestead claimant may be permitted to perfect his proof unless he has since voluntarily abandoned the land.

Under the last proviso of said section, however, if a settlement was made on said lands subsequent to December 1, 1882, by persons claiming the same under the settlement laws of the United States, it will defeat the right of the purchaser, whether said purchase was made prior or subsequent to December 1, 1882, and the settler will be allowed to prove up for said lands as in other like cases.

Applicants to purchase under this section will be required to publish notice of intention as directed by instructions under the third and fourth sections, and the proof must show:

1. That the tract was of the numbered sections prescribed by the grant.
2. That it was coterminous with constructed parts of said road.

3. That it was sold by the company to the applicant, or one under whom he claims, as a part of its grant.

4. That it was excepted from the operation of the grant.

5. That at the date of said sale it was not in the bona fide occupancy of adverse claimants under the preemption or homestead laws, whose claims and occupancy have not since been voluntarily abandoned.

6. That it has not been settled upon subsequent to the first day of December, 1882, by any person or persons claiming the right to enter the same under the settlement laws.

7. That the applicant is, or has declared his intention to become, a citizen of the United States.

8. And that he, or one under whom he claims, was a bona fide purchaser of the land from the company.

The proof upon these points being found satisfactory, the entry will be allowed and the usual cash certificate and receipts will be issued thereon reciting the fact that the entry is in accordance with the fifth section of the act of March 3, 1887, (24 Stat., 556).

No entry will be allowed under this section until it shall have been finally determined by this Department that the land was excepted from the grant.

### THE SIXTH SECTION

Provides that when any such lands have been sold and conveyed as the property of the company for State and county taxes, and the grant to the company has been thereafter forfeited, the purchaser at such sale shall have the preference right for one year from the date of this act, and no longer, in which to purchase said lands from the United States by paying the Governments price for said lands, provided said lands were not previous to or at the time of the taking effect of such grant in the possession or subject to the right of an actual settler.

206           The period prescribed by the statute for presenting applications under this section having expired, instructions as to methods of procedure are deemed unnecessary.

## THE SEVENTH SECTION

Authorizes the Secretary of the Interior to refuse to certify or convey lands on account of any railroad grant where it shall appear to him that to do otherwise would give to the grantee more lands than the granting act contemplated giving.

Very respectfully,

S. M. STOCKSLAGER,  
Commissioner.

Approved:

WM. F. VILAS,  
Secretary.

207

4-207

Government's Exhibit G.

396576.

F R D

"F", RJFM.

R.J.F.M.

## DEPARTMENT OF THE INTERIOR,

General Land Office,

Washington, D. C. March 31, 1915.

I hereby certify that the annexed copy of a letter, dated March 2, 1893, from the Commissioner of the General Land Office to D. A. McKnight, is a true and literal exemplification from the record thereof in this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on (SEAL) the day and year above written.

C. M. BRUCE,  
Assistant Commissioner of the General Land Office.

GOVERNMENT EX "G"



208 DEPARTMENT OF THE INTERIOR, W.S.B.

"F" General Land Office, W.C.E.

8-7641. Washington, D. C. March 2, 1893.

Address only the Commissioner of the General Land Office.

D. A. McKnight, Atty.,  
Washington, D. C.

Sir:

You are hereby advised that on the 19th of January, last, the Department returned the papers, without action, in the case of Jasper J. Brown v. the N. O. P. Ry. Co., involving the NE $\frac{1}{4}$  NW $\frac{1}{4}$ , N $\frac{1}{2}$  NE $\frac{1}{4}$ , and SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec. 13, T. 2 N., R. 7 W., Louisiana, the company having withdrawn its appeal under the 1st and 3d sections of its agreement embodied in departmental letter of Dec. 16, 1892. The company's selection of the SW $\frac{1}{4}$  NE $\frac{1}{4}$  is this day canceled, the remaining tracts have been patented to the company, and it will at an early date be called upon to revest the title in the United States, to the end that Brown may be allowed to make entry of the land in its entirety and perfect the same under the homestead law.

Very respectfully,

W. M. STONE,  
Commissioner.

211 In the District Court of the United States  
For the Western District of Louisiana.

No. 961 In Equity.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY

W. R. PICKERING LUMBER COMPANY

and

RIVER LAND & LUMBER COMPANY.

This cause came on to be heard on the Bill of Complaint, answer to the Bill of Complaint, Intervention of



Mrs. Josephine Brown, and answers to the said Intervention, and upon an agreed statement of fact, and other evidence adduced;

And it appearing to the Court that this case has been regularly filed, put at issue, taken up and tried;

And the cause having been orally argued and submitted on briefs;

And it appearing that the law applicable hereto and the evidence herein being in favor of the defendant, and against the plaintiff and intervenor;

WHEREFORE, the court is of the opinion and doth adjudge and decree as follows:—

1st. That the demands of the plaintiff be rejected at plaintiff's costs.

2nd. That the demands contained in the intervention of Mrs. Josephine Brown be rejected at her costs.

3rd. That a decree be entered herein confirming the patent issued to the New Orleans Pacific Railway Company on March 3, 1885, in so far as it includes the Southwest quarter of the northwest quarter, Section 13 Township 2 North, Range 7 West, and the patent issued to said company on August 8, 1889, in so far as it includes the northeast quarter of the northwest quarter and the north half of the northeast quarter, Section 13, Township 2 North, Range 7 West.

4th. That the River Land & Lumber Company be quieted in its ownership and possession of the Northeast Quarter of Northwest Quarter, Section 13, Township 2 North, Range 7 West, and that its title thereto be, and the same is hereby, confirmed.

And that the W. R. Pickering Lumber Company be quieted in its ownership and possession of the North Half of the Northeast Quarter and the Southwest Quarter of the Northeast Quarter, Section 13, Township 2 North, Range 7 West, and that its title thereto be, and the same is, hereby confirmed.

Thus done, read and signed in open court at Shreveport, Louisiana, in the Western District of Louisiana, this 1st day of June, 1915

ALECK BOARMAN

United States Judge.

ENDORSED: No. 961. United States District Court. Western District of Louisiana. United States vs New Orleans Pacific Ry. Co. and W. R. Pickering Lumber Co. and River Land & Lumber Co. FINAL DECREE. Filed Jun. 1, 1915, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana. Recorded in Chancery Order Book, Vol. 4, Folio 194.

212 In the District Court of the United States  
For the Western District of Louisiana.

No. 961 In Equity.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY,  
W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND & LUMBER COMPANY.

TO THE HONORABLE ALECK BOARMAN,  
JUDGE OF THE UNITED STATES DISTRICT  
COURT FOR THE WESTERN DISTRICT OF LOUISIANA:

The petition of the United States, through undersigned counsel, and Josephine Brown, through her undersigned solicitor, plaintiff and intervenor, respectively, in the above numbered and entitled cause, with respect represent:—

That plaintiff and intervenor conceive themselves aggrieved by the decree rendered and signed by your honor in said cause on June 1, 1915 and desire to appeal from said decree to the United States Circuit Court of Appeals for the 5th Circuit. Petitioners present herewith, and make a part hereof, an assignment of errors in said decree.

WHEREFORE, plaintiff and intervenor prays that this appeal may be allowed and that a transcript of the whole record, proceedings, testimony, exhibits, and papers upon which said decree was made, duly authenticated, be sent to the Circuit Court of Appeals for the 5th Circuit in the manner and form, and at the time prescribed by law and by the rules of the said Circuit Court of Appeals. Petitioners pray that citation of appeal issue and be served upon the said New Orleans Pacific Railway Company, the W. R. Pickering Lumber Company and the River Land & Lumber Company according to law and in accordance with the rules of procedure in such cases. Petitioners further pray that pending said appeal all proceedings herein be stayed and that said appeal operate as a supersedeas. That the appeal herein prayed for by intervenor may be allowed and that same operate as a supersedeas upon the giving by intervenor of bond with surety in an amount to be fixed by the court and conditioned according to law. Petitioners pray for all orders necessary in the premises and for general relief.

GEORGE WHITFIELD JACK,  
United States Attorney

ROBERT A. HUNTER  
Assistant United States Attorney  
Solicitors for Plaintiff

213 S. M. ATKINSON  
Solicitor for Intervenor.

#### ORDER.

The above and foregoing petition being considered, it is ordered that the appeal prayed for by the United States, plaintiff, herein to the United States Circuit Court of Appeals for the 5th Circuit be, and the same is hereby granted and allowed.

It is further ordered that citation of appeal issue and be served upon the defendant New Orleans Pacific Railway

Company, W. R. Pickering Lumber Company and River Land & Lumber Company and that said appeal be made returnable to the United States Court of Appeals for the 5th Circuit at New Orleans, Louisiana, according to law, and in accordance with the rules of said court.

It is further ordered that pending said appeal all proceedings herein be suspended, said appeal to operate as a supersedeas.

It is further ordered that the appeal herein prayed for by Mrs. Josephine Brown, intervenor, be allowed and that same operate likewise as a supersedeas, upon the giving by intervenor of bond, with surety, in the sum of Fifty dollars (\$50.00) conditioned according to law.

Thus done and signed this 27th day of July 1915.

ALECK BOARMAN

United States Judge.

On the hearing of this suit the several legal points and rulings thereon assigned as basis of errors were discussed by the complainants' counsel and more or less discussed by the defendants' counsel. The Court filed no opinion on any one of these several issues other than as recited in the decree, but found reason in its own judgment as to the law and facts disclosed on the hearing to decide the case adversely to the complainant and dismiss the bill.

ALECK BOARMAN,

Judge.

ENDORSED: No. 961. United States District Court, Western District of Louisiana. United States vs New Orleans Pacific Ry. Company, W. R. Pickering Lumber Company and River Land & Lumber Company ASSIGNMENT OF ERRORS: PETITION OF U. S. AND INTERVENOR FOR APPEAL: AND ORDER GRANTING APPEAL. Filed Jul. 27, 1915, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

214      In the District Court of the United States  
            For the Western District of Louisiana.

No. 961    In Equity.

UNITED STATES OF AMERICA,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY,  
W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND & LUMBER COMPANY.

Through their respective undersigned solicitors, now come the United States of America, plaintiff in the above numbered and entitled cause, and Mrs. Josephine Brown (widow of Jasper J. Brown, original settler) intervenor in this suit, and, with respect, show:

That in the decree herein made and entered June 1, 1915, rejecting the demands of plaintiff and intervenor, confirming the patent issued to the New Orleans Pacific Railway Company in so far as it includes the land in controversy in this cause, and quieting the W. R. Pickering Lumber Company and the River Land & Lumber Company in the ownership and possession of, and confirming their titles to, said land, there is manifest error;

And the following assignment of errors committed or happening in said cause, upon which plaintiff and intervenors will rely upon their appeal from said decree, to-wit:—

1.

That it was error for the court to hold that the United States, through its officers, the Attorney General and the United States Attorney, did not have authority to bring, prosecute or maintain this suit, for the reason that the Attorney General did have such authority under the general laws of the United States, and it was specifically made his duty to file such suit by the second section of the act of Congress approved March 3, 1887, (24 Statutes at Large, page 556).

## 2.

That it was error for the court to hold that there was laches on the part of plaintiff and intervenor in filing this suit, and that they were estopped to bring and maintain the same, for the reason that such defences cannot be plead against the Government, and for the further reason that Jasper J. Brown, the actual settler named in the bill of complaint and intervention, and his widow Josephine Brown, had open, notorious, and uninterrupted possession of the land in question from the time of his settlement thereon to the date of the institution of this suit, which possession was notice to all of said settler's rights.

## 3.

That it was error for the court to hold that this suit was barred and the titles of the defendants confirmed by the provisions and limitations contained in the acts of congress of March 3, 1887, (24 Statutes at Large, page 556), March 3, 1891, (26 Statutes at Large, page 1093), and March 2, 1896, (29 Statutes at Large, page 42), which said statutes were plead in bar of this suit and as muniments of title by defendants, and it was likewise error for the court to sustain the pleas and defences predicated on said acts, for the following reasons:

(a) That defendants' titles were not confirmed by the act of March 3, 1887, nor were plaintiff's or intervenor's rights in the premises adversely affected by said act.

(b) That the acts of March 3, 1891, and March 2, 1896, were not applicable to a suit of this nature wherein the United States is seeking a decree cancelling the patent in so far as it includes the land described in the bill of complaint, which decree would result in the consummation of the homestead entry of, and the issuance of a patent to, the said Mrs. Josephine Brown, widow of Jasper J. Brown, who, by reason of the public land laws and under the terms of the act of February 8, 1887, acquired vested rights in and to said premises before, and at the time of, the definite location of said railroad, which vested rights continued to exist in full force to, and at the time of, the passage of the

said acts, and which vested rights Congress did no intend to divest, modify, or affect, by said acts, and which vested rights could not lawfully be divested, affected or modified thereby. That, consequently, the court erred in sustaining the pleas and defences predicated on said acts, the said acts being intended to operate only against the Government when asserting the cancellation of patents for errors, fraud,

216 or irregularities, which affect the title only as between the United States and the patentee or holder under the patent, and not to prevent the cancellation of patents to lands which are not free from individual claims.

(c) That the said act of March 2, 1896, is inapplicable to this suit because, as shown by the evidence, on February 25, 1901, before the period of limitation provided by said act had run, the United States filed suit in this court to cancel patents to a large number of tracts of land, including the tract herein involved, alleged to have been erroneously issued, said suit being entitled United States vs. New Orleans Pacific Railway Company et als Number 16 on the docket of this court, which suit is now pending. That defendants Pickering Lumber Company and River Land & Lumber Company were not made original parties defendant in said suit No. 16, and instead of amending to make said Pickering Lumber Company and River Land & Lumber Company, parties defendant, this present suit was filed, which is but a continuation of said Suit No. 16 so far as these defendants and this particular tract of land are concerned.

#### 4.

That it was error for the court to confirm the patents issued to the New Orleans Pacific Railway Company on the 3rd day of March, 1885, and August 8, 1889, in so far as they included the land described in the bill of complaint in this suit, which said land, the evidence shows, was occupied by, and in the possession of, Jasper J. Brown, an actual settler, at the time of the definite location of the line of road of the New Orleans Pacific Railway Company and still remained in his possession at the date of the passage of the act of Congress of February 8, 1887; the said Jasper



J. Brown being qualified to enter said lands under the homestead laws, and having settled upon, and occupied, the same with that intention.

## 5.

That inasmuch as the act of February 8, 1887, applies both to indemnity and place lands, the court erred in holding that the provisions of said act had no relation to, and did not affect, lands within the indemnity limits of the grant to the New Orleans Pacific Railway Company, and that indemnity lands were not affected by the forfeitures, confirmations, reservations, and exceptions contained in said act.

217

## 6.

That it was error for the court to hold that the W. R. Pickering Lumber Company and the River Land & Lumber Company and their predecessors in title were bona fide purchasers of said lands and to decree the confirmation of the titles, and to quiet defendants in their ownership and possession of same, for the reason that the defence of "bona fide purchaser" is an affirmative defence, the burden of proving which rests on defendants, and they failed to offer any testimony to show that they did not, at the time of their purchases have knowledge of the possession and adverse claim of Jasper J. Brown and the adverse claim of intervenor. And for the further reason that such defence of bona fide purchaser, even if established, can be plead only as against the technical claim of the Government in a suit to cancel patent for its own benefit, and is not applicable in a suit of this character to cancel patents for the benefit of an actual settler having a prior right, or to a suit instituted by such settler to have the land decreed held in trust for him.

## 7.

That it was error for the court not to hold that the lands described in the bill of complaint were, as alleged in said bill, occupied by and in the possession of the said Jasper J. Brown, an actual settler, prior to, and at the time of, the definite location of said New Orleans Pacific Railway

Company's road on November 17, 1882, and still remained in his possession at the time of the passage of the act of February 8, 1887, and remained continuously thereafter in the possession of said Jasper J. Brown and intervenor, and that, therefore, the said lands were excepted from the grant of the New Orleans Pacific Railway Company, and their inclusion in the said patent was erroneous.

## 8.

218 That it was error for the court to hold that the right of the said actual settler, Jasper J. Brown, to the premises described in the bill of complaint was affected by or lost to him, and that the right of the Government to the recovery in this action of a decree cancelling the patent herein was affected or lost, on account of the fact that at the time of the definite location of said railroad the said Jasper J. Brown, settler, did not have on file in the proper United States Land Office an application to enter said lands as a homestead, for the reason that the evidence shows that the said Jasper J. Brown was an actual settler on said lands at the date of the definite location of said railroad, and still remained in the possession of same at the time of the passage of the act of February 8, 1887, under the terms of which act such lands were excepted from the grant.

## 9.

That it was error in the court not to hold that no title to the said land was acquired by the said New Orleans Pacific Railway Company by virtue of its grant, for the reason that the land described in the bill of complaint was occupied by an actual settler at the time of the filing of the map of definite location of the said defendant company's railroad on November 17, 1882, and said actual settler, Jasper J. Brown, having theretofore settled upon said land and being qualified to enter same under the homestead laws of the United States, and intending so to do, which said property remained in the possession of the said actual settler at the time of, and subsequent to, the passage of the act of February 8, 1887, continuously up to the time of the death of the said Jasper J. Brown in 1895, and that since the death

of the said Jasper J. Brown said property has continuously remained in the possession of the intervenor.

## 10.

It was error in the court not to hold that the said Jasper J. Brown acquired a homestead right or claim to the land in question by reason of his settlement and occupancy of the same at, and prior to, the filing of the map of definite location by the New Orleans Pacific Railway Company of its line of railroad, because by reason of such settlement and occupancy of the said Jasper J. Brown, who was qualified to enter such lands under the homestead laws

219 and intended so to do, such lands were excepted from the railroad company's grant, and the said Jasper J. Brown acquired a homestead right or claim thereon.

## 11.

It was error in the court not to hold that the said lands were occupied by and in the possession of the said Jasper J. Brown prior to and at the time of the definite location of said railroad and remained in his possession and in the possession of intervenor continuously since; that on August 10, 1888, the said Jasper J. Brown filed homestead application for said tract of land; that the New Orleans Pacific Railway Company made objection to, and contested, said application; that the Register and Receiver of the local Land Office rendered a decision in favor of the said Jasper J. Brown; that the railway company appealed from the said decision to the commissioner of the General Land Office; that the commissioner of the General Land Office affirmed said decision in favor of the said settler, holding that the said land was in the occupancy of the said Jasper Jp Brown, a bona fide settler, at the date of the railroad company's selection thereof, and the same was not, therefore, subject to selection; that the Commissioner of the General Land Office rejected the railway company's claim to said land, and made demand on said New Orleans Pacific Railway Company to reconvey same to the United States in order that the said Jasper J. Brown might consummate his claim by

entry thereto; and that the said Jasper J. Brown complied with all of the requirements of the homestead laws of the United States, all of which facts are shown by the evidence in said cause.

## 12.

It was error in the court not to hold and find that the said New Orleans Pacific Railway Company did not acquire an indefeasible title to the land described in the bill of complaint under the provisions of the act of March 3, 1871. That under its general powers, Congress, on the failure of the New Orleans, Baton Rouge & Vicksburg Railway Company to complete its railroad within the time specified by the said act, had the right to impose conditions upon the enjoyment of the grant made to said railroad company by the act of March 3, 1871, as to lands previously patented or thereafter to be patented, and to reserve and except from said grant lands occupied by actual settlers at the time of the definite location of said road, and still remaining in their possession at the time of the passage of the act of February 8, 1887, and to provide for the protection of said settlers. That in any event such act, having been accepted by the New Orleans Pacific Railway Company, its conditions, reservations, and exceptions were binding upon said company and its assignees.

## 13.

It was error in the court not to hold that intervenor is, and always has been, ready and willing to pay to the defendant New Orleans Pacific Railway Company or to the other defendants such sum of money as was expended by them in securing from the United States patent to the land described in the bill of complaint.

## 14.

It was error in the court to render or enter its decree herein against plaintiff and intervenor rejecting their demands and confirming the said patent and quieting the W. R. Pickering Lumber Company and River Land & Lumber Company in the ownership and possession of said lands and confirming their title thereto.

## 15.

It was error in the court not to have entered a decree herein in favor of the plaintiff cancelling and declaring null and void the patents issued to the New Orleans Pacific Railway Company on the 3rd of March 1885 and 8th of August 1889 in so far as the same include the land described in the bill of complaint, and also cancelling the deeds of the W. R. Pickering Lumber Company and River Land & Lumber Company to said lands as prayed for in said bill of complaint.

## 16.

It was error in the court not to have entered a decree herein declaring the title of the W. R. Pickering Lumber Company and the River Land & Lumber Company to be held in trust for the said Jasper J. Brown, his heirs or assigns, and to have declared him to be the owner of said land, and to have required and directed the said

221 W. R. Pickering Lumber Company and the River Land & Lumber Company to make, execute and deliver to the said Jasper J. Brown, his heirs or assigns, deeds for all of their right, title and interest in and to said land, and, in default, or their failure to do so, that such deeds be made by the clerk or some other person duly appointed thereto, as prayed for in the petition of intervention in this case.

WHEREFORE, plaintiff and intervenor pray that this assignment of errors may be maintained, and that the decree appealed from be annulled, avoided and reversed, and they respectfully pray that there be a decree in favor of plaintiff and intervenor as prayed for in the bill of complaint and in the petition of intervention herein.

GEO. WHITFIELD JACK

United States Attorney

ROBERT A. HUNTER

Assistant U. S. Attorney

Solicitors for Plaintiff.

S. M. ATKINSON

Solicitor for Intervenor.

222      In the District Court of the United States  
            For the Western District of Louisiana.

No. 961    In Equity.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY

and

W. R. PICKERING LUMBER COMPANY,  
RIVER LAND AND LUMBER COMPANY.

KNOW ALL MEN BY THESE PRESENTS, That we Mrs. Josephine Brown, (widow) as principal and M. A. CAVANAUGH, JR. as surety, residents of the Parish of Vernon, State of Louisiana, are held and firmly bound unto the New Orleans Pacific Railway Company and W. R. Pickering Lumber Company, and River Land and Lumber Company, defendants and appellees, in the sum of Fifty (\$50) Dollars, lawful money of the United States, to be paid to them, and their respective executors, administrators, successors, or assigns, to which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors and administrators, by these presents.

Signed and dated this the 24th day of July, 1915.

Whereas, lately at a term of the District Court of the United States sitting in and for the Western District of Louisiana, in a suit pending in said Court between the United States of America, as plaintiff, and the New Orleans Pacific Railway Company, and W. R. Pickering Lumber Company and River Land & Lumber Company, as defendants, and Mrs. Josephine Brown as Intervenor, No. 961 on the docket of said Court, in Equity, a decree was entered rejecting the demands and dismissing the intervention of the said Mrs. Josephine Brown, Intervenor, and the said Intervenor has been allowed an appeal to the United States Circuit Court of Appeals, for the Fifth Cir-

cuit, to reverse the decree rendered in the above numbered and entitled cause, said appeal having been allowed to operate as a supersedeas;

Now, therefore, the condition of this obligation is such that if the above named Mrs. Josephine Brown Intervenor, shall prosecute his said appeal to effect, and answer all damages and costs if he fail to make his plea good, then this obligation shall be void; otherwise to remain in full force and effect.

JOSEPHINE BROWN  
M. A. CAVANAUGH, JR.

State of Louisiana }  
Parish of Vernon. }

On the 24th day of July, 1915, personally appeared before me Mrs. Josephine Brown and M. A. Cavanaugh, Jr., personally known to me to be the persons described in and who executed the foregoing instrument as parties thereto, and respectively acknowledged, each for himself that they executed the same as their free act and deed for the purposes therein set forth.

And the said Mrs. Josephine Brown and M. A. Cavanaugh, Jr., being respectively by me being duly sworn says, each for himself and not one for the other, that he is a resident and householder of the Parish of Vernon, in the Western District of Louisiana, and that he is worth the sum of Fifty (\$50) Dollars over and above his just debts and legal liability and property exempt from execution.

JOSEPHINE BROWN  
M. A. CAVANAUGH, JR.

Subscribed and sworn to before me this 24th day of July, 1915.

J. FAIR HARDIN  
(SEAL) Notary Public.

Approved this 29th day of July, 1915.

ALECK BOARMAN  
United States Judge.



**ENDORSED:** No. 961. United States District Court, Western District of Louisiana. United States vs New Orleans Pacific Ry. Co., W. R. Pickering Lumber Company and River Land & Lumber Company. **INTERVENOR'S BOND.** Filed Aug. 2, 1915, Leroy B. Gulletta, Clerk, U. S. District Court, West Dist. of Louisiana.

224

**CITATION OF APPEAL.**

(U. S. Circuit Court of Appeals)

**CITATION OF APPEAL.**

The United States of America

District Court of the United States,

Western District of Louisiana.

The President of the United States of America

To the New Orleans Pacific Railway Company, the W. R. Pickering Lumber Company, and the River Land & Lumber Company, defendants in the cause entitled United States of America vs. New Orleans Pacific Railway Company, W. R. Pickering Lumber Company and River Land & Lumber Company, No. 961 in Equity on the docket of the District Court of the United States for the Western District of Louisiana—Greeting:

You are hereby cited and admonished to be and appear at the UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, to be holden the City of New Orleans, Louisiana, on the thirtieth day from the date hereof, pursuant to an appeal allowed and filed in the Office of the Clerk of the District Court of the United States for the Fifth Circuit and the Western District of Louisiana, wherein the United States of America and Mrs. Josephine Brown are appellants, and the New Orleans Pacific Railway Company, W. R. Pickering Lumber Company and River Land and Lumber Company are appellees, to show cause, if any there be, why the judgment rendered against the said United States of America and Mrs. Josephine Brown as in said decree mentioned, should not be cor-

rected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the HONORABLE EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, at the City of Shreveport, Louisiana, this 20th day of November in the year of our Lord, one thousand nine hundred and fifteen and of the Independence of the United States of America, the one hundred and fortieth year.

(Seal)

ALECK BOARMAN,  
Judge.

225 Service of the within citation of appeal accepted and acknowledged this 23d day of November, 1915.

HUDSON, POTTS, BERNSTEIN & SHOLARS,  
Attorneys of record for New Orleans Pacific Railway Company, defendants and appellees.

JAS. G. PALMER,  
Attorneys of Record for W. R. Pickering Lumber Company, defendants and appellees.

A. H. WHITE,  
WHITE & THORNTON & HOLLOMAN,  
Attorneys of record for River Land & Lumber Company, defendants and appellees.

U. S. District Court, filed Nov. 27, 1915.  
Leroy B. Gulotta, Clerk, West. Dist. of Louisiana.

No. 961.

United States District Court,  
Western District of Louisiana.

UNITED STATES OF AMERICA  
vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY  
ET ALS.

CITATION OF APPEAL.

2864

U. S. Circuit Court of Appeals—Filed Dec. 1, 1916.  
FRANK H. MORTIMER, Clerk.

226

## MINUTES OF COURT.

United States District Court,  
Western District of Louisiana.

Monday, Shreveport, Louisiana, March 8, A. D. 1915.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Aleck Boarman, U. S. Judge.

Present: Robert A. Hunter, Ass't. U. S. Attorney.

Present: U. S. Marshal: By J. M. Grimmet, Chief Deputy.

Present: Leroy B. Gulotta, Clerk.

## UNITED STATES

vs.

No. 961 In Equity.

NEW ORLEANS PACIFIC RY. CO.

and

W. R. PICKERING LBR. CO. Ltd.

and

RIVER LAND &amp; LUMBER CO.

In this cause now into Court come Messrs. Hudson, Potts, Bernstein & Sholars, and file their appearance as Solicitors for the New Orleans Pacific Railway Company.

IT IS ORDERED THAT COURT ADJOURN UNTIL  
10 O'CLOCK TO-MORROW MORNING.

227

United States District Court,  
Western District of Louisiana.

Friday, Shreveport, La., April 30, A. D. 1915.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Aleck Boarman, U. S. Judge.

Present: Geo. W. Jack, United States Attorney.

Present: Robert A. Hunter, Ass't. U. S. Attorney.

Present: U. S. Marshal: By J. M. Grimmet, Chief Deputy.

Present: Leroy B. Gulotta, Clerk.

No. 961 In Equity.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY CO.

and

W. R. PICKERING LBR. CO. Ltd.

and

RIVER LAND & LUMBER COMPANY.

This cause came on this day for trial. Mr. G. W. Jack, U. S. Attorney, and Mr. Robert A. Hunter, Ass't. U. S. Attorney, appeared for the United States, Plaintiff, and Mr. F. G. Hudson, Jr., and Mr. J. C. Palmer and Mr. H. H. White appeared on behalf of the Defendants, and Mr. S. M. Atkinson appeared on behalf of Mrs. Josephine Brown, Intervenor, and the cause having been argued, was submitted and taken under advisement by the Court—it being agreed that decision may be rendered by the Court at any time or place.

IT IS ORDERED THAT COURT ADJOURN UNTIL 10 O'CLOCK TO-MORROW MORNING.

228 United States District Court,  
Western District of Louisiana.

Tuesday, Shreveport, Louisiana, June 1st, 1915.

Court met pursuant to adjournment and was ordered opened.

Present and Presiding: Hon. Aleck Boarman, U. S. Judge.

Present: Geo. W. Jack, U. S. Attorney.

Present: Robert A. Hunter, Ass't. U. S. Attorney.  
 Present: J. H. Kirkpatrick, U. S. Marshal.  
 Present: J. M. Grimmet, Chief Deputy U. S. Marshal.  
 Present: Leroy B. Gulotta, Clerk.

No. 961 In Equity.

UNITED STATES

vs.

NEW ORLEANS PACIFIC RY. CO.

and

W. R. PICKERING LBR. CO.

and

RIVER LAND & LUMBER CO.

In this case which had heretofore been submitted to the Court, decision is now rendered in favor of the defendants, and, thereupon, upon Motion of Mr. H. H. White, of counsel for the defendants, the following Decree is signed and filed:

#### FINAL DECREE.

This cause came on to be heard on the Bill of Complaint, answer to the Bill of Complaint, Intervention of Mrs. Josephine Brown, and answers to the said Intervention, and upon an agreed statement of fact, and other evidence adduced;

And it appearing to the Court that this case has been regularly filed, put at issue, taken up and tried;

And the cause having been orally argued and submitted on briefs;

And it appearing that the law applicable hereto and the evidence herein being in favor of the defendant, and against the plaintiff and intervenor;

WHEREFORE the Court is of the opinion and doth adjudge and decree as follows:

1st: That the demands of the Plaintiff be rejected at plaintiff's costs.

2nd: That the demands contained in the intervention of Mrs. Josephine Brown be rejected at her costs.

3rd: That a decree be entered herein confirming the patent issued to the New Orleans Pacific Railway Company on March 3, 1885, insofar as it includes the SOUTH-WEST QUARTER OF THE NORTHEAST QUARTER, SECTION 13, TOWNSHIP 2 NORTH, RANGE 7 WEST, and the patent issued to said Company on August 8, 1889, insofar as it includes the NORTHEAST QUARTER OF THE NORTHWEST QUARTER and the NORTH HALF OF THE NORTHEAST QUARTER SECTION 13, TOWNSHIP 2 NORTH, RANGE 7 WEST.

4th: That the River Land & Lumber Company be quieted in its ownership and possession of the NORTH-EAST QUARTER OF NORTHWEST QUARTER, SECTION 13, TOWNSHIP 2 NORTH, RANGE 7 WEST, and that its title thereto be, and the same is hereby confirmed.

And that the W. R. Pickering Lumber Company be quieted in its ownership and possession of the NORTH HALF OF THE NORTHEAST QUARTER and the SOUTHWEST QUARTER OF THE NORTHEAST QUARTER, SECTION 13, TOWNSHIP 2 NORTH, RANGE 7 WEST, and that its title thereto be, and the same is, hereby confirmed.

Thus done, read and signed in open court at Shreveport, Louisiana, in the Western District of Louisiana, this 1st day of June, 1915.

ALECK BOARMAN,  
United States Judge.

It is ordered that court adjourn until 10 o'clock tomorrow morning.

229

## PRAECIPE FOR TRANSCRIPT

In the District Court of the United States for the Western  
District of Louisiana.

No. 961 In Equity.

UNITED STATES OF AMERICA,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY,  
W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND & LUMBER COMPANY.

Shreveport, Louisiana, July 19, 1915.

Clerk U. S. District Court,  
Western District of Louisiana,  
Shreveport, Louisiana.

Dear Sir:—

Please prepare transcript of appeal in the above case and embody therein the following pleadings, testimony, documents, exhibits and proceedings:—

1. Bill of Complaint.
2. Pleas of Prescription, estoppel and laches, and motion to dismiss, and answer of the New Orleans Pacific Railway Company.
3. Pleas of Prescription, estoppel and laches, and motion to dismiss, and answer of the W. R. Pickering Lumber Co.
4. Pleas of Prescription, estoppel and laches, and motion to dismiss, and answer of the River Land & Lumber Company.
5. Intervention of Mrs. Josephine Brown.
6. Answer of United States to the intervention of Mrs. Josephine Brown.



7. Pleas of Prescription, estoppel and laches, and motion to dismiss, and answer of the New Orleans Pacific Railway Company, to intervention of Mrs. Josephine Brown.
8. Pleas of Prescription, estoppel and laches, and motion to dismiss, and answer of the W. R. Pickering Lumber Company to the intervention of Mrs. Josephine Brown.
9. Pleas of prescription, estoppel and laches, and motion to dismiss, and answer of the River Land & Lumber Company to the intervention of Mrs. Josephine Brown.
10. Admissions of fact agreed to by solicitors for the government, defendants, and intervenor, together with the documentary evidence therein referred to, as follows:—
  - (a) Patent from United States to New Orleans Pacific Railway Company of date March 3, 1885, in so far as the same relates to the SW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 13, T. 2 N., R. 7 W. And patent from United States to New Orleans Pacific Railway Company of date August 8, 1889, in so far as the same relates to the NE $\frac{1}{4}$  NW $\frac{1}{4}$  & N $\frac{1}{2}$  NE $\frac{1}{4}$  said Section, township and range. The Clerk shall copy the patent filed in evidence by the government in case No. 884 on the docket of this court entitled United States vs. New Orleans Pacific Railway Company et al, which patent embraced the SW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 13, T. 2 N., R. 7 W., and patent No. 6 of date August 8, 1889, which embraces the other property above described, and which said patent is filed herewith, the Clerk to omit the descriptions of all other lands except those relating to the property in question.

- (b) House Report No. 2698 (49th Congress, First Session) and Senate Report No. 711 (47th Congress, First Session), to be copied from printed report of the hearings before the Committee on Public Lands in the House of Representatives on H. R. 5890, dated January 26 and 27, 1914, pages 118 to 135 inclusive.
- 230
- (c) Interrogatories and depositions to H. C. Brewster, and deed from New Orleans Pacific Railway Company to Horace C. Brewster thereto attached.
  - (d) Interrogatories to Charles L. Pack and answers of said Pack to interrogatories, and deeds attached to said depositions.
  - (e) Interrogatories and depositions of Ed. B. Greene, and deeds thereto attached.
  - (f) Interrogatories and depositions to Geo. R. Nicholson, and deeds thereto attached.  
Said interrogatories, depositions and deeds to be copied from the record in the case of United States vs M. O. P. Ry. Co. & River Land & Lumber Co. No. 884 on the docket of this Court.
- 11: Testimony taken at the trial, including all objections to all testimony and all offerings.
- 12: The following exhibits referred to in said testimony:
- (a) Government's Exhibit A: Tracing of survey and field investigations made by James W. Neal and Elzie Stokes, to be sent to the United States Circuit Court of Appeals in the original.
  - (a-1) Government's Exhibit A-1: Resolution adopted at a meeting of the stockholders of the New Orleans Pacific Railway Company accepting the provisions of the act of Con-

gress of February 8, 1887, to be copied from the printed report of the hearings before the Committee on Public Lands of the House of Representatives on H. R. 5890 of date January 26 and 27, 1914, said resolution appearing on pages 28 and 29 of said report.

- (b) Government's Exhibit B: Agreement of the New Orleans Pacific Railway Company to reconvey lands, dated August 3, 1892, to be copied from page 30 of printed report of said hearing above referred to.
- (c) Copy of Land Office Record relating to the homestead entry and contest of Jasper J. Brown and the New Orleans Pacific Railway Company.
- (d-1) Government's Exhibit D-1: Bill in Equity, including order for appearance of non-residents, filed by the Government in the case of United States vs. New Orleans Pacific Railway Company et als No. 16 on the docket of this court, together with that portion of the exhibits and list of lands thereto attached which relate to the property in controversy in this case; the remainder of said exhibits and list to be omitted.
- (d-2) Government's Exhibit D-2: Omit from the transcript the subpoena in chancery in the case of United States vs. New Orleans Pacific Railway Company No. 16 above referred to, but insert under the heading of "Government's Exhibit D-2" the following description of said offering: "Government's exhibit D-2 is the Subpoena in Chancery issued in said suit No. 16 on February 27, 1901, to Robert Strong, Vice-President and Charles M. Greene, Receiver, of the New Orleans Pacific Railway Company, which

said subpoena in Chancery was served upon said Robert Strong, Vice-President, and Charles M. Greene, Receiver, on February 28, 1901.

- 231      (d-3) Government's exhibit D-3: Omit from the transcript this exhibit, but place under the heading of "Government's exhibit D-3" the following description of said offering, to-wit: "Government's exhibit D-3 is a certified copy of the appearance of Charles M. Greene, Receiver of the New Orleans Pacific Railway Company, in suit No. 16 above referred to, filed March 28, 1901, said appearance being made for the purpose only of contesting the regularity and legality of the process in said cause, and not otherwise.
- (d-4) Government's exhibit D-4: Minutes of court in the case of United States vs New Orleans Pacific Railway Company et als No. 16 of date May 25, 1903, showing order for supplemental process.
- (d-5) Government's exhibit D-5: Omit this exhibit from the transcript, but place under the heading of "Government's exhibit D-5" the following description of said offering, to-wit: "Government's exhibit D-5 is an order in the case of United States vs New Orleans Pacific Railway Company et als No. 16 signed by Aleck Boorman, Judge, of date February 25, 1901, and recites that certain of the defendants in said cause were not inhabitants of, or found within, the district and had not voluntarily appeared, and ordering that said defendants appear, plead, answer or demur in said cause by the first Monday of September, 1903. The New Orleans Pacific Railway Company was not referred to in said order as being one of such

absent defendants, but service of said order was made on Charles M. Greene, Receiver of said company, June 29, 1903."

(d-6) Government's exhibit D-6: Omit this exhibit from the transcript, but insert under the heading "Government's exhibit D-6" the following description of said exhibit, to-wit: "Government's exhibit D-6 is an order in the case of United States vs New Orleans Pacific Railway Company et als No. 16 signed by Aleck Boorman, Judge, of date February 25, 1901, and recites that certain of the defendants in said cause were not inhabitants of, or found within the district and had not voluntarily appeared, and ordering that said defendants appear, plead, answer or demur in said cause, by the first Monday of September, 1903. The New Orleans Pacific Railway Company was not referred to in said order as being one of such absent defendants, but service of said order was made on Robert Strong, Vice-President of said company, June 29, 1903."

(d-7) Government's exhibit D-7: Motion to vacate and annul process in case of United States vs New Orleans Pacific Railway Company et als No. 16, filed September 25, 1903.

(d-8) Government's exhibit D-8: Order of court requiring defendants in said suit No. 16 to appear, and answer, which said order was signed and filed May 25, 1904.

(d-9) Government's exhibit D-9: Omit exhibit D-9 from the transcript, and insert in lieu thereof under the heading "Government's exhibit D-9" the following description of

said offering: "Government's exhibit D-9 is a certified copy of an order of court signed and filed May 25, 1904, appearing in this transcript under title of Government's exhibit D-8, and was served upon Robert Strong, Vice-President of the said New Orleans Pacific Railway Company, on June 7, 1904."

- (d-10) Government's exhibit D-10: Omit this exhibit from the transcript, but insert in lieu thereof under the heading "Government's exhibit D-10" the following description of said exhibit: "Government's exhibit D-10 is certified copy of an order of court signed and filed May 25, 1904, appearing in this transcript under the title Government's exhibit D-8 and was served upon Charles M. Greene, Receiver of the New Orleans Pacific Railway Company, June 26, 1904."
- (d-11) Government's exhibit D-11: Omit this exhibit from the transcript, but insert in lieu thereof under the heading "Government's exhibit D-11" the following description thereof: "Government's exhibit D-11 is a certified copy of the appearance of the New Orleans Pacific Railway Company and others in said suit No. 16, filed June 26, 1904."
- (d-12) Government's exhibit D-12: Demurrer of the New Orleans Pacific Railway Company, filed August 26, 1904, in the case entitled United States vs New Orleans Pacific Railway Company et als No. 16.
- (d-13) Government's exhibit D-13: Amended demurrer of the New Orleans Pacific Rail-

way Company, filed October 24, 1904, in case of United States vs New Orleans Pacific Railway Company et als No. 16.

(d-14) Government's exhibit D-14: Decree overruling demurrer, sustaining bill of complaint, and assigning defendants to answer to suit No. 16 entitled United States vs New Orleans Pacific Railway Company et als. Filed March 17, 1905.

(d-15) Government's exhibit D-15: Plea of the New Orleans Pacific Railway Company, filed May 22, 1905, in equity suit No. 16 entitled United States vs New Orleans Pacific Railway Company et als.

(d-16) Government's exhibit D-16: Omit this exhibit from the transcript, and insert in lieu thereof under the heading "Government's exhibit D-16" the following description of said offering: "Government's exhibit D-16 is a certified copy of the replication filed by the United States February 18, 1906, to the plea of the New Orleans Pacific Railway Company in the case entitled United States vs New Orleans Pacific Railway Company et als No. 16. Which said plea is inserted in this transcript in full under the title "Government's exhibit D-15."

233

(d-17) Government's exhibit D-17: Motion filed by the United States November 6, 1913, in suit No 16, being United States vs New Orleans Pacific Railway Company et als.

(d-18) Government's exhibit D-18: Minutes of court of November 6, 1913, in the case of United States vs New Orleans Pacific Rail-



way Company et als No. 16 showing reference of plea of the New Orleans Pacific Railway Company to the merits.

(d-19): Government's exhibit D-19: Answer of the New Orleans Pacific Railway Company in suit No. 16, United States vs New Orleans Pacific Railway Company et als, filed December 16, 1913.

13. Government's exhibit E: Letter from H. L. Muldrow, Acting Secretary, dated June 6, 1887, to the Registers and Receivers. To be copied from 5th Land Decisions, page 686 et seq.
14. Government's exhibit F: Letter from the Commissioner of the General Land Office dated February 13, 1889, to the Registers and Receivers of the General Land Office, to be copied from the 8th Land Decisions, page 348.
15. Government's exhibit G: Letter from Commissioner General Land Office to D. A. McKnight, attorney, of Washington, D. C., dated March 2, 1893.
16. Government's exhibit H: Blue print made from tracing filed in connection with testimony taken at Alexandria, Louisiana, May 4, 1915, to be sent up to the United States Circuit Court of Appeals in the original.
17. Defendant's exhibit No. 1: Tracing of survey and field investigation made by R. E. McKnight, February 1915, to be sent up to the United States Circuit Court of Appeals in the original.
18. Decree of court.
19. Petition and order of appeal.
20. Assignment of errors.
21. Intervenor's appeal bond.

22. Citation of appeal.
23. Minutes of court.
24. Præcipe for transcript.
25. Certificate of clerk.

GEORGE WHITFIELD JACK  
United States Attorney.

ROBERT A. HUNTER  
Assistant United States Attorney.  
Solicitors for Plaintiff.

F. G. HUDSON, JR.  
Solicitors for the N. O. P. Ry. Company.

JAS. G. PALMER  
Solicitors for the Pickering Lbr. Co.

H. H. WHITE  
Solicitors for River Land & Lbr. Co.  
Solicitors for Defendants.

S. M. ATKINSON  
Solicitor for Mrs. Brown, Intervenor.

ENDORSED: No. 961. United States District Court,  
Western District of Louisiana. United States vs New  
Orleans Pacific Railway Co. W. R. Pickering Lumber  
Company and River Land & Lumber Company.  
PRAECIPE FOR TRANSCRIPT OF APPEAL. Filed  
Sep. 22, 1915, Leroy B. Gulotta, Clerk, U. S. District  
Court, West Dist. of Louisiana.

234 In the District Court of the United States  
for the Western District of Louisiana

No. 961 In Equity.

UNITED STATES OF AMERICA

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY,  
W. R. PICKERING LUMBER COMPANY,

and

RIVER LAND AND LUMBER COMPANY

SUPPLEMENTAL PRAECIPE FOR TRANSCRIPT.

Shreveport, La.,

1915.

Clerk, United States District Court,  
Western District of Louisiana,  
Shreveport, La.

Dear Sir

In preparing transcript of appeal in the above case, please omit from such transcript Government's Exhibits D-1 to D-19, inclusive, and insert in lieu thereof, the following:

235 "These exhibits show that on February 27, 1901, the United States Government, acting through the Attorney General and the United States Attorney for the Western District of Louisiana, filed its bill in Equity, entitled: "United States of America vs. New Orleans Pacific Railway Company, et al." the same being No. 16 on the Equity docket of the United States then Circuit now District Court for the Western District of Louisiana.

"This bill was a suit by the Government against the New Orleans Pacific Railway Company, a Louisiana corporation, alleged to be within the jurisdiction of the Court, and the following non-residents of the State of Louisiana: John F. Dillon and Amos H. Calef, residents of New York City; George J. Gould, resident of New York and New

Jersey, sued individually and as heir and executor of Jay Gould, deceased; Edwin Gould; Howard Gould and Frank Gould, residents of the City of New York, sued individually and as heirs of Jay Gould; Anna Gould, wife of Count Boni de Castelane, a resident of Parish; Daniel F. Marsh, a resident of the State of Connecticut; A. Baldwin, a resident of New Orleans; J. B. Watkins, a resident of Lawrence, Kansas; and the following, whose residences were unknown, Charles Paulet, John F. Eddy and William D. Dewing.

"In the bill, the Government prayed for a decree cancelling patents to some hundred and fifty tracts of land, including the land in controversy in the case at bar, alleging that said tracts were erroneously patented to the said railway company under its grant from the United States, on the ground that said lands were, at the time of the definite location of the railroad, and at the date of the passage of the Act of Congress confirming the grant—February 8, 1887—occupied by actual settlers named in the bill of complaint and for which reason it was claimed the said lands were excepted from the grant, and the patents therefor issued erroneously.

Attached to the said bill of complaint was an order of the Court dated February 25, 1901, directing that those of the defendants, naming them (omitting, however, the New Orleans Pacific Railway Company), who were non-residents of the Western District of Louisiana, be ordered to "appear, plead and answer or demur by the \_\_\_\_\_ Monday of \_\_\_\_\_ 1901; and that this order be served upon them personally wherever found". The blanks in this order, in which were to be inserted the day of the month and the name of the month on which the said defendants were commanded to appear and answer, were not filled in but were left blank, and such order did not include among such non-resident defendants, the New Orleans Pacific Railway Company, which, however, as a matter of fact, was domiciled in the City of New Orleans, without the Western District of Louisiana.

A subpoena in chancery in said suit No. 16 was issued on the 27th day of February, 1901, by the Clerk of the

United States Circuit Court for the Western District of Louisiana, directed to the United States Marshal for the Eastern District of Louisiana, commanding him to summon various defendants, including: "the New Orleans Pacific Railway Company, New Orleans, La.; Robert Strong, General Agent, New Orleans, La.; Charles M. Green, Receiver of the New Orleans Pacific Railway Company, New Orleans, La., to appear before the Honorable Judge of the Fifth Judicial Circuit of the United States of America at a Circuit Court to be holden at the City of Alexandria, La., on the first Monday of April, 1901". Robert Strong, General Agent, and Charles M. Green, stated in the subpoena to be officers and representatives of the New Orleans Pacific Railway Company, are not mentioned in the bill in Equity nor in the Order of the Court directing service above noted. The return on this subpoena shows personal service on Charles M. Green, Receiver, and service on Robert Strong, General Agent, "by handing the same to W. R. Elliott, Secretary of said Company, in person at the office of said Company", on the 28th day of February, 1901.

236 On March 27, 1901, several defendants, including Charles M. Green, Receiver of the New Orleans Pacific Railway Company, and the New Orleans Pacific Railway Company filed in the United States District Court for the Western District of Louisiana in this cause a petition praying for limited appearance, upon which an order was entered by the Court allowing the same and authorizing them to make "a limited appearance in this cause for the purpose of contesting the legality and regularity of the process issued against them in the said cause, and the regularity and validity of the service thereof", which said appearance was duly made on the same date.

On the 25th day of May, 1903, the following entry was made on the minutes of the United States District Court for the Western District of Louisiana, Alexandria Division: "United States vs New Orleans Pacific Railway Company, No. 16. This cause came on at this time to be heard upon the motion of defendants to dismiss the suit for want of proper service, and after argument of counsel the Court

ordered that supplemental process issue and be served upon the defendants, to-wit, an order of the Court conforming to the first order with change of date, directing them to appear". The New Orleans Pacific Railway Company was not named in this order, but Charles M. Green, Receiver, and Robert Strong, Vice-President, were served on June 29, 1903, with a copy of an order of Court in this cause ordering and commanding them to appear and answer by the first Monday of September, 1903, the said order reciting their non-residence from the jurisdiction of the Court, and commanding the service upon them wherever found.

On September 25, 1903, by leave of the Court obtained, various defendants, including the New Orleans Pacific Railway Company and Charles M. Green, Receiver, made a limited appearance in this cause for the purpose of contesting the legality and validity of the process served upon them, and for that purpose only, alleging themselves to be non-residents of the Western District of Louisiana, moved the Court to vacate, annul and set aside the process served upon them, on the ground that no valid order had ever been entered commanding them to appear and plead to said bill; that the only order ever entered and signed upon said bill was the original order of February 25, 1901, which left blank the day of the month and the name of the month upon which they were to appear and answer, and that what purported to be a copy of an order commanding them to appear and answer on the first Monday of September, 1903, was not in fact a valid order of this Court, for the reason that no such order had ever been entered and signed by the Court (what had actually been done was that the blank dates in the original order had been filled in and a copy thereof certified and served), and that such service was therefore illegal and void, and not such service as to compel defendants to appear and plead to said bill.

On May 23, 1904, the following minute was entered in minutes of the United States Circuit Court for the Western District of Louisiana: "United States vs New Orleans Pa-

cific Railway Company, No. 16. In this cause the Court sustained the motion to quash the service made upon the defendants, and ordered that the defendants named in the original order be cited to set forth therein to plead, answer or demur on the second Monday of September, 1904, at the City of Alexandria."

On May 25, 1904, an original order of Court was entered commanding the defendants named in the first order had upon this bill to appear and answer on the second Monday of September, 1904, in the City of Alexandria, in the Western District of Louisiana, and that this order be served upon said defendants wherever found; a copy of this order was served personally by the United States Marshal for the Eastern District of Louisiana on Robert Strong, Vice President of the New Orleans Pacific Railway Company on

June 7th, 1904, and on Charles M. Green, Receiver  
237 of the New Orleans Pacific Railway Company on June 20th, 1904.

On August 26th, 1904, various defendants, including the New Orleans Pacific Railway Company, through their solicitors, made appearance in this cause, and on the same date filed a general demurrer to the Government's bill.

On October 24, 1904, the New Orleans Pacific Railway Company filed an amended demurrer, by leave of the Court had, alleging as additional grounds for the dismissal of the suit, that the plaintiff was not entitled to maintain the action or have the relief prayed for, inasmuch as it appeared on the face of the record that the suit was not brought within five years from the passage of an act of Congress entitled: "An act to provide for the extension of time within which suits may be brought to vacate and annul patents and for other purposes," approved March 2, 1896 (29 Statutes at Large, c. 39, p. 42), which demurrers, together with similar demurrers filed by the other defendants, were by the Court on the 17th day of March, 1905, overruled, and the said defendants assigned to answer the bill on the 22nd day of May, 1905, at Alexandria, La.



Various answers and pleas were filed on behalf of the several defendants, and on May 22, 1905, the New Orleans Pacific Railway Company filed a plea to the whole bill, setting up, in bar of the Government's action, the act of Congress approved March 2, 1896, (29 Statutes at Large, 42), especially averring that the time provided in such statute, within which the Government might bring a suit to cancel a patent to lands erroneously issued under any railroad grant had elapsed prior to the 25th day of May, 1904, not until which date, it was contended, was the Government's suit herein brought or this defendant served with valid legal process so as to interrupt the running of said prescription, and that prior to September, 1904, no appearances or pleadings had been made in the cause on behalf of this defendant, by which the said prescription might be interrupted or the Court acquire jurisdiction over this defendant.

On February 19, 1906, the Government, through the United States Attorney, filed a replication of the United States of America, complainant, to this plea of the New Orleans Pacific Railway Company, defendant. November 6, 1913, the United States Attorney filed a motion to strike out the plea of the New Orleans Pacific Railway Company filed on May 22, 1905, as above set forth, on the ground that the same was a mere repetition of the amended demurrer of said Company, which had been filed on October 24, 1904, and overruled by the Court.

On November 6, 1913, the said motion of the Government to strike out the plea of the New Orleans Pacific Railway Company was overruled by the Court and the said plea referred to the merits of the cause, with leave to incorporate the same in its answer, to be filed within forty days, within which time, to-wit, on December 16, 1913, the New Orleans Pacific Railway Company filed its answer.

238

The undersigned counsel for the Government and the parties defendant in this cause agree that the above statement is a correct statement of the facts shown by the Government's exhibits D-1 to D-19 inclusive,

and desire the same inserted in the transcript in lieu thereof.

GEO. WHITFIELD JACK  
United States Attorney.

ROBERT A. HUNTER  
Assistant United States Attorney.  
Solicitors for Plaintiff.

HUDSON, POTTS, BERNSTEIN & SHOLARS  
Solicitors for New Orleans Pacific Railway Company.

J. G. PALMER  
Solicitors for W. R. Pickering Lumber Co.

H. H. WHITE, by F. G. HUDSON, JR.  
Solicitors for River Land & Lumber Co.

S. M. ATKINSON  
Solicitors for Intervenor.

ENDORSED: No. 961 In Equity. United States District Court, Western District of Louisiana. United States vs. New Orleans Pacific Railway Company, W. R. Pickering Lumber Company and River Land & Lumber Company. SUPPLEMENTAL PRAECIPE FOR TRANSCRIPT OF APPEAL. Filed Nov. 27, 1915, Leroy B. Gulotta, Clerk, U. S. District Court, West Dist. of Louisiana.

239 CLERK'S CERTIFICATE.  
United States of America

United States District Court, Fifth Circuit,  
Western District of Louisiana.

Clerk's Office:

I, Leroy B. Gulotta, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the above and foregoing 238 pages contain and form a full, complete and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial, in the cause entitled—

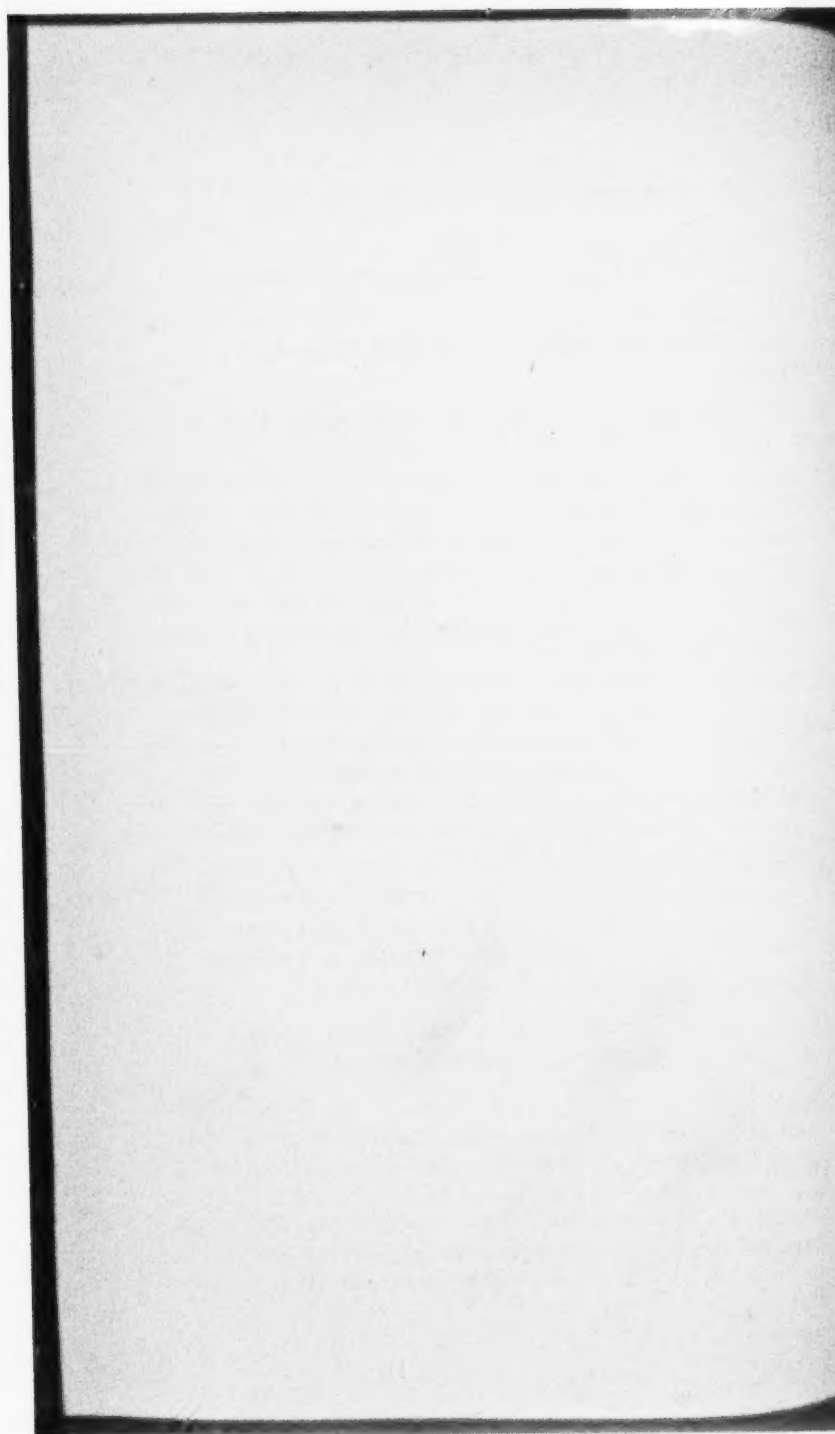
UNITED STATES OF AMERICA  
versus  
NEW ORLEANS PACIFIC RAILWAY COMPANY  
and  
W. R. PICKERING LUMBER COMPANY,  
and  
RIVER LAND AND LUMBER COMPANY,

wherein MRS. JOSEPHINE BROWN is INTERVENOR, Number 961 In Equity on the docket of the United States District Court for the Western District of Louisiana, the said Transcript having been made in accordance with the Praecipies of Solicitors for the Appellants and Appellees, filed in this Office, copies of said Praecipies being included in the Transcript, and

I DO FURTHER CERTIFY, That by agreement of counsel, the original exhibits marked GOVERNMENT'S EXHIBIT "A", "H" and "I" (being tracings and blue print filed in evidence) are sent up in the original.

WITNESS my hand and seal of Office, at the City of Shreveport, Louisiana, on this the 27th day of  
(SEAL) November, A. D., 1915.

LEROY B. GULOTTA  
Clerk, United States District Court,  
Western District of Louisiana.



326 That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument in part.

Extract from the minutes of March 30th, 1916.

THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE Brown <i>versus</i>	} No. 2864.
NEW ORLEANS PACIFIC RAILWAY COMPANY, W. R. Pickering Lumber Company, and River Land and Lumber Company.	

On this day this cause was called, and, after argument by George Whitefield Jack, Esq., United States attorney, for appellants, and Mark Norris, Esq., for appellees, was continued until Friday, March 31st, 1916, at 10.30 o'clock a. m. for further argument.

Further argument and submission.

Extract from the minutes of March 31st, 1916.

THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE Brown <i>versus</i>	} No. 2864.
NEW ORLEANS PACIFIC RAILWAY COMPANY, W. R. Pickering Lumber Company, and River Land & Lumber Company.	

This cause, as continued from yesterday, was this day resumed, and, after argument by Mark Norris, Esq., H. H. White, Esq., James G. Palmer, Esq., and F. G. Hudson, jr., Esq., for appellees, and Robert A. Hunter, Esq., Assistant United States attorney, for appellants, was submitted to the court.

327 Opinion of the court. Filed October 3d, 1916.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA AND MRS. M. CAROLINE Hughes and Joseph Hughes, appellants, <i>vs.</i>	} No. 2852.
NEW ORLEANS PACIFIC RAILWAY COMPANY AND RIVER Land and Lumber Company, appellees.	
THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE Brown, appellants, <i>vs.</i>	} No. 2864.
NEW ORLEANS PACIFIC RAILWAY COMPANY, W. R. Pickering Lumber Company, and River Land and Lumber Company, appellees.	

THE UNITED STATES OF AMERICA AND WILLIAM R. TURNER, appellants,  
*vs.*  
 NEW ORLEANS PACIFIC RAILWAY COMPANY AND W. R. PICKERING LUMBER COMPANY, appellees.

No. 2865.

Appeals from the District Court of the United States for the Western District of Louisiana. Before Pardee and Walker, circuit judges, and Maxey, district judge. Per curiam: For reasons stated in the opinions rendered in the cases of United States and Newton B. Terrell et al. v. New Orleans Pacific Railway Co. et al., and of United States and Stephen N. Grant v. New Orleans Pacific Railway Co. et al. (present term, U. S. C. C. A., 5th Circuit), the decree appealed from in each of the three above-mentioned cases is affirmed.

Maxey, district judge, was prevented by illness from participating in the decision of these cases.

(Original filed October 3rd, 1916.)

328

## Judgment.

Extract from the minutes of October 3d, 1916.

THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE BROWN  
*versus*  
 NEW ORLEANS PACIFIC RAILWAY COMPANY, W. R. PICKERING LUMBER COMPANY, and RIVER LAND and LUMBER COMPANY.

No. 2864.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Louisiana, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed.

Petition for rehearing. Filed October 23d, 1916.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE BROWN, appellants,  
*vs.*  
 NEW ORLEANS PACIFIC RAILWAY COMPANY, W. R. PICKERING LUMBER COMPANY, and RIVER LAND & LUMBER COMPANY, appellees.

No. 2864.

Appeal from the District Court of the United States for the Western  
District of Louisiana.

**Petition for rehearing.**

Now come the United States and intervenor, appellants in the above numbered and entitled suit, and petition the court to set aside the decree herein rendered affirming the decree of the lower court, and to grant a rehearing, or at least an argument for same, on the grounds specifically set forth in application this day filed in suit No. 2870.

(Signed) **GEORGE WHITFIELD JACK,**  
*United States Attorney.*

(Signed) **ROBERT A. HUNTER,**  
*Assistant United States Attorney.*

(Signed) **S. M. ATKINSON,**  
*Solicitor for Mrs. Josephine Brown,*  
*Solicitors for Appellants.*

I certify that in my opinion the foregoing application for rehearing is well founded.

(Signed) **GEORGE WHITFIELD JACK,**  
*United States Attorney.*

Shreveport, La., October 20, 1916.

**Order denying rehearing.**

Extract from the minutes of November 4, 1916.

THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE Brown <i>versus</i> NEW ORLEANS PACIFIC RAILWAY COMPANY, W. S. PICK- ering Lumber Company, and River Land and Lumber Company.	}	No. 2864.
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Ordered that the petition for rehearing filed in this cause be, and the same is hereby, denied.

Petition for appeal and order allowing same. Filed March 14th,  
1917.



In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE Brown, appellants, <i>vs.</i> NEW ORLEANS PACIFIC RAILWAY COMPANY, W. R. PICK- ering Lumber Company, and River Land and Lumber Company, appellees.	}	No. 2864.
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330

Petition for appeal.

*To the Honorable Judges of the United States Circuit Court of Appeals, Fifth Circuit:*

Now comes the United States and Mrs. Josephine Brown, appellants in the above numbered and entitled cause, and say that on the third day of October, 1916, this court entered a decree herein in favor of the defendants and against this plaintiff and intervenor, in which decree there was error greatly to the prejudice and injury of the plaintiff and intervenor, as will more fully appear by the assignment of errors, which is filed herewith.

Wherefore, the United States and Mrs. Josephine Brown pray that an appeal may be allowed in said cause from this court to the Supreme Court of the United States and that proper orders for the allowance of such appeal be made by this court.

(Signed)      GEORGE WHITFIELD JACK,  
United States Attorney.  
ROBERT A. HUNTER,  
Assistant United States Attorney.  
S. M. ATKINSON,  
Attorney for Mrs. Josephine Brown.

Order.

The foregoing petition for an appeal in the above numbered and entitled cause (with assignment of errors attached) to the Supreme Court of the United States being considered—

It is ordered that such an appeal be granted and allowed the United States as prayed for and that appeal be granted and allowed Mrs. Josephine Brown on her giving bond in the sum of twenty-five dollars, conditioned according to law.

331      Thus done and signed this 14th day of March, 1917.

(Signed)      DON A. PARDEE,  
Judge United States Circuit Court  
of Appeals, Fifth Circuit.

Assignment of errors. Filed March 14th, 1917.

Now come the United States of America and Mrs. Josephine Brown, plaintiff and intervenor, respectively, herein, and appellants,

and in connection with their petition for an appeal herein, present this, their assignment or errors, and say that the decree entered herein on the 3rd day of October, 1916, is erroneous in the following particulars, to wit:

## I.

The court erred in holding that plaintiff's right of action in this cause was barred by the statutes of limitations provided by the act of March 2, 1896.

## II.

The court erred in holding that lands occupied by actual settlers under the provisions of the act of Congress approved February 8th, 1887 (24 Statutes at Large, 391-392), were not thereby divested of the status of public lands subject to entry by any one qualified under the public-land laws of the United States, and that the fact of occupation of such lands under the terms and provisions of said statute did not give to the settler the right of one who had made formal entry of such lands.

## III.

The court erred in not holding that the lands herein involved under the terms of the original grant of March 3rd, 1871, and the confirmatory act of February 8th, 1887, were excepted from the grant by reason of the settler's occupancy on the dates named in the acts, and in failing to cancel the patent in so far as it covered said lands.

## IV.

The court erred in holding that the United States had no interest to assert the alternative prayer in the bill of complaint in which it was prayed that the patent be decreed held in trust for the settler, his heirs, and assigns.

## V.

The court erred in holding that the Commissioner of the General Land Office and the Secretary of the Interior had no jurisdiction to determine the controversy between the settler and the patentee growing out of the application made by the settler to enter said lands.

## VI.

The court erred in not holding that the patent and the title to the land were held in trust by the defendants for the intervenor.

## VII.

The court erred in holding that the claim of the intervenor had been lost through laches, abandonment, and estoppel.

## VIII.

The court erred in affirming the decree of the District Court.

Wherefore, plaintiff and intervenor pray that the decree herein complained of be reversed and corrected, and that they may have an adjudication and decree in their favor as prayed for in the bill of complaint and petition of intervention in this cause.

(Signed)

GEO. WHITFIELD JACK,  
*United States Attorney.*

ROBERT A. HUNTER,  
*Assistant United States Attorney.*

S. M. ATKINSON,  
*Attorney for Mrs. Josephine Brown.*

Appeal bond. Filed March 14th, 1917.

333 In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE  
Brown, appellants,

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY, W. R. PICKER-  
ing Lumber Company, and River Land and Lumber  
Company, appellees.

No. 2884.

Know all men by these presents, that we, Mrs. Josephine Brown, widow, appearing herein and represented by her solicitor, S. M. Atkinson, the said solicitor being a resident of the parish of De Soto, State of Louisiana, and R. F. Brown as surety, a resident of the parish of Vernon, State of Louisiana, are held and firmly bound unto the New Orleans Pacific Railway Company, the W. R. Pickering Lumber Company, and the River Land and Lumber Company, defendants and appellees, in the sum of twenty-five (\$25.00) dollars, lawful money of the United States, to be paid to them and their respective executors, administrators, successors, and assigns, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators by these presents.

Signed and dated this the seventh day of March, A. D. 1917.

Whereas, lately at a term of the United States Circuit Court of Appeals for the Fifth Circuit, in a suit pending in said court between the United States of America as plaintiff and the New Or

leans Pacific Railway Company, W. R. Pickering Lumber Company, and the River Land and Lumber Company as defendants and Mrs. Josephine Brown as intervenor, No. 2864 on the docket of said court, in equity, a decree was entered affirming the decree of the United States District Court for the Western District of Louisiana in which the demands and intervention of the said Mrs. Josephine Brown, intervenor, were rejected, and the said intervenor has been allowed an appeal without supersedeas to the Supreme Court of the United States to reverse the decree rendered in the above numbered and entitled cause:

Now, therefore, the condition of this obligation is such that if the above named Mrs. Josephine Brown, intervenor, shall prosecute her said appeal to effect and answer all costs if she fail to make her plea good, then this obligation shall be void; otherwise to remain in full force and effect.

	MRS. JOSEPHINE BROWN, <i>Intervenor.</i>
Per (signed)	S. M. ATKINSON,
	<i>Solicitor for Intervenor.</i>
(Signed)	R. F. BROWN, <i>Surety.</i>

STATE OF LOUISIANA, *Parish of Vernon.*

Personally appeared before me S. M. Atkinson and R. F. Brown, personally known to me to be the persons described in and who executed the foregoing instrument as parties thereto, and respectively acknowledged, each for himself, that he executed the same as his free act and deed for the purpose therein stated.

And the said R. F. Brown, surety, being by me first duly sworn, says that he is a resident and householder of the parish of Vernon, in the Western District of Louisiana, and that he is worth the sum of twenty-five (\$25.00) dollars, over and above his just debts and legal liability and property exempt from execution.

(Signed)	S. M. ATKINSON.
(Signed)	R. F. BROWN.

Subscribed and sworn to before me this seventh day of March, 1917.

[SEAL.]	(Signed)	J. FAIR HARDIN,
		<i>Notary Public.</i>

Approved: This 14th day of March, 1917.

(Signed)	DON A. PARDEE,
	<i>Judge United States Circuit Court of Appeals,</i>
	<i>Fifth Circuit.</i>

335 Opinion of the Court In re United States, Newton B. Terrell et al. vs. New Orleans Pacific Railway Company et al. Filed October 3d, 1916.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA, NEWTON B. Terrell, and Elijah W. Terrell, ap- pellants. <i>vs.</i>	} Number 2871.
NEW ORLEANS PACIFIC RAILWAY COMPANY AND Gulf Lumber Company, appellees.	

Appeal from the District Court of the United States for the Western District of Louisiana.

On the 3rd day of March, 1885, a patent of the United States which included a specified 160 acres of land in Vernon Parish, Louisiana, was issued to the New Orleans Pacific Railway Company, which was the assignee of a land grant made by an act of Congress of March 3, 1871, to the New Orleans, Baton Rouge & Vicksburg Railroad Company. (16 Stat. L., 573.) On January 10, 1890, the patentee conveyed the land mentioned to Jabez B. Watkins, and the interest of the latter by mesne conveyances has passed to the Gulf Lumber Company, a corporation, to which a deed was made on April 10, 1907, by the Wright-Blodgett Company, then the holder of the claim under the patent. The bill in this case, filed January 21, 1915, in the name of the United States against the New Orleans Pacific Railway Company and the Gulf Lumber Company, averred that prior to and at the time of the filing of the maps showing the definite location of the road of the New Orleans Pacific Railway Company and at the time of the passage of the act of Congress of February 8, 1887, entitled "An act to declare a forfeiture of lands granted to the New Orleans, Baton Rouge and Vicksburg Railroad Company, to confirm title to certain lands, and for other purposes" (24 Stat. L., 391), (the provisions of which act it was averred were accepted, as provided for in the act, by the New Orleans Pacific Railway Company on April 20, 1887), the land in question was occupied by and in possession of Wiley Terrell, who was then and there an actual settler and in all respects qualified to enter public lands of the United States under the homestead laws thereof; that the Gulf Lumber Company had full knowledge and notice of the rights and occupancy of the said actual settler, and that because of quoted provisions contained in the last-mentioned act of Congress the inclusion of the 160 acres mentioned in the patent of March 3, 1885, was erroneous. The bill prayed in the alternative (1) that the patent and the deed to the Gulf Lumber Company be cancelled and declared null and void, or (2) that the title held by the Gulf Lumber Company be decreed to be held by it in trust for the said Wiley Terrell or his heirs or assigns and to be conveyed to said Wiley Terrell, his heirs or assigns. Each of the defendants filed an answer in which, besides other matters set up as defenses, it was duly pleaded



that the claim asserted by the bill was barred by the statute of limitations of March 2, 1896 (29 Stat. L., 42; 3 U. S. Comp St., 1913, 34901), and by laches and equitable estoppel. Elijah W. Terrell and Newton B. Terrell filed separate interventions, in the suit, 337 each of them claiming that at the time the bill was filed he was in possession of part of the 160 acres described in the patent, was qualified to acquire it by homestead entry and was entitled to do so as the assignee of one to whom, as the result of successive transfers, the rights of Wiley Terrell had passed. By the decree which is appealed from the bill and the intervening petitions were dismissed, the assailed patent was confirmed as to the 160 acres in question, and the Gulf Lumber Company was quieted in its possession and ownership thereof.

Geo. Whitefield Jack, U. S. attorney; Robert A. Hunter, Asst. U. S. attorney, and J. H. Stephens, jr., for appellants.

Mark Norris, W. H. Thompson, and Blanchard, Smith & Palmer, for appellee, The Gulf Lumber Company.

Before Pardee and Walker, circuit judges, and Maxey, district judge.

Walker, circuit judge (after stating the facts as above): For support of the claims asserted by the bill and by the intervening petitions much reliance is placed upon provisions contained in the above-mentioned act of Congress of February 8, 1887, which was enacted, and the provisions of which were formally accepted by the patentee, after the date of the issue of the attacked patent, but before the patentee made the conveyance to Jabez B. Watkins, through 338 whom the appellee, Gulf Lumber Company, claims title. The tract in question was embraced in the grant and confirmation to the New Orleans Pacific Railroad Company made by section 2 of that act unless it was excepted by the proviso to that section, "that all said lands occupied by actual settlers at the date of the definite location of said road and still remaining in their possession or in possession of their heirs or assigns shall be held and deemed excepted from said grant, and shall be subject to entry under the public land laws of the United States." It is contended by the counsel for the appellants that that proviso and the provision of section 6 of the same act making it applicable to lands excepted from the grant and confirmation which had already been patented before the act was passed, had the effect of giving to land occupied by an actual settler at the date of the definite location of the road, and remaining in his possession or in the possession of his heirs or assigns at the time of the passage of the act, but which had been previously patented and the title to which was held by the patentee at the time it accepted the provisions of the act, the status of erroneously patented lands, which the patentee was obligated to relinquish or reconvey to the United States upon the demand of the Secretary of the Interior, and the patent to which was subject to be cancelled in a suit brought for that

purpose by the Attorney General pursuant to the authority and command of section 2 of the act of March 3, 1887, entitled "An act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, and for other purposes." (24 Stat L., 556; 2 U. S. Comp. St., 1913, §4896.) These contentions are combatted by counsel for the appellees upon grounds not now necessary to be stated or considered. It is not material to determine whether the patent was or was not subject to cancellation if, because of a duly pleaded bar caused by lapse of time or otherwise, that relief, though the plaintiff formerly was entitled to it, is not grantable in this suit, which was brought nearly thirty years after the patent was issued.

The right to a cancellation of the patent is barred by the act of March 2, 1896 (29 Stat. L. 42; 2 U. S. Comp. St., 1913, §4901), unless there is something in the case to make that statute inapplicable to it. That act provides "that suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant shall only be brought within five years from the passage of this act"—that is to say, from March 2, 1896. The statute is applicable to a patent to public land of the United States which was open to sale and conveyance through the Land Department, though the patent was subject to be declared void on the ground that the land patented was reserved or excluded from the grant under which the patent was erroneously issued; and the lapse of the prescribed time before the institution of the suit to vacate and annul the patent gives to the patent the same effect against the United States that it would have had if it had been valid in the first place. (United States v. Chandler-Dunbar Company, 209 U. S. 447; United States v. Winona, etc. Railroad, 165 U. S. 463.) But it is insisted that the above-quoted proviso to section 2 is of the act of February 8, 1887, had the effect of preventing the land in question, occupied as it was at the date of the definite location of the road and when the act was passed, being considered public land subject to sale and conveyance through the Land Department. To yield to this insistence, we think, would be going in the teeth of the express words of the proviso declaring that lands so occupied "shall be subject to entry under the public land laws of the United States." The proviso had the effect of excluding lands so occupied from the grant and confirmation made by the preceding part of the section, and it may be inferred that the purpose of such exclusion was to afford to the occupants of the lands the opportunity of acquiring them under the public land laws, if they possessed the qualifications and took the steps requisite to entitle them to do so; but nothing in the proviso indicates a purpose to give it the effect of a grant to the occupants, their heirs or assigns, of the lands so occupied, and its



explicit language forbids the conclusion that land so occupied or settled upon was thereby deprived of the status of public land subject to entry under the public-land laws of the United States, or that the mere fact of occupation gave to the occupant the right of one who had effectively entered the land, rather than of making it merely subject to entry. See *Oregon & Cal. R. R. v. United States*, 238 U. S. 393, 434. In this connection the decision in the case of *Northern Pacific Railway Co. v. United States*, 227 U. S. 355, was called to our attention. There is an obvious distinction between the facts of that case and those of the case at bar. It was held in that case that the

limitation which the statute created did no apply to a suit for  
 341 the cancellation of a patent to land which at and prior to the date of the issue of the patent belonged, not to the United States as a part of its public domain but to the Yakima Indians, being part of a reservation made by a treaty with them which was ratified many years before the patent issued. Land to which a tribe of Indians has a perfected right does not belong to the same category as land which by statute is explicitly declared to be "subject to entry under the public land laws of the United States." We are of opinion that at the time of the issue of the patent the land in question was public land of the United States which was open to sale and conveyance through the Land Department.

Another contention is that the fact that the sought for remedy of a cancellation of the patent was intended to enure to the benefit, not of the United States, but of an occupant of the land in question, or his heirs or assigns, renders the statute inapplicable to this suit. Nothing in the language of the statute gives any color to the claim that any suit brought by the United States to vacate and annul any patent to public land erroneously issued prior to the enactment under a railroad or wagon road grant was intended to be exempt from the bar which the statute created. It is apparent that the enactment evidences a purpose to restrict a vast power theretofore judicially recognized, and decided to have been confided to the Attorney General, resorts to which had not been infrequent, and to control it by a statute of limitations having the effect of avoiding some of the evils that might be expected to result from an abuse of the power

by a postponement of its exercise until by lapse of time those  
 342 claiming under a patent might be deprived of the means, perhaps available at an earlier date, of combating a charge that it was procured by fraud or was erroneously issued. (*United States v. San Jacinto Tin Co.*, 125 U. S. 273.) There had been notable instances of the exercise of this power by the Attorney General for the exclusive benefit of private parties asserting prior claims to the land involved, which the Government was under some duty to protect. (*United States v. Beebe*, 127 U. S. 338; *United States v. Missouri, K. & T. R. Co.*, 141 U. S. 358; *Germania Iron Co. v. United States*, 165 U. S. 379; *United States v. Winona, etc. Railroad*, 165 U. S.

463.) It may be supposed that such instances, as well as those in which the power had been invoked to protect some public interest or title, had effect in bringing the lawmakers to a realization of the propriety of restricting the power by an explicit statute of limitations, applicable specifically to a suit by the United States to vacate and annul a land patent, whether the suit is or is not one in which, because the only interest or right sought to be protected is that of a private party, some other bar or defense available against such party could successfully be set up. At any rate we are of opinion that the broad general language of the statute forbids the conclusion that it is inapplicable to such a suit as the one under consideration.

The claims asserted by the bill and by the intervening petitions that the land in question was held by the patentee and those claiming under it subject to a trust in favor of Wiley Terrell, his heirs or assigns, involve the recognition of the patent as valid, and that it effected an extinguishment of the title and interest of the  
343 Government in the land. If a trust in favor of an occupant of the land arose because of the circumstances attending the acquisition of the patent, the resulting cause of action accrued, not to the Government, but to the cestui que trust. The exercise of no governmental power was required to secure an enforcement of such a trust. The controversy to which the assertion of such a claim gives rise is one in which the Government is not concerned, and in which private parties alone are interested, and the settlement of it properly may be left to personal litigation between them. (*United States v. Beebe*, 127 U. S. 338; *Northern Pacific Railway v. Trodick*, 221 U. S. 208.) The conclusion is that the Government has nothing to complain of in the decree appealed from, as each of the remedies its bill prayed for in the alternative was properly denied, any right it may have had to one of those remedies being barred by the limitation pleaded, and the other, assuming that it was not also subject to the same bar, being one to which the Government was not entitled because of its lack of interest in the claim asserted.

What has been said disposes of the attack upon the decree except as to that part of it which adjudged against the claims asserted by the intervening petitions and quieted the Gulf Lumber Company in its ownership and possession of the lands involved in the suit. That part of the decree might properly be the subject of complaint by the interveners if the effect of it was to deprive them of an interest in the land to which the evidence showed that they were entitled.

The evidence tended to prove that Wiley Terrell lived on the land in question continuously from 1879 until long after the  
344 passage of the act of February 8, 1887. If the patentee held the title to that land subject to a trust in favor of Wiley Terrell, that trust became enforceable by the latter certainly not later than April 20, 1887, the date of the acceptance by the patentee of the provisions of the act just mentioned. He did nothing evidencing the assertion of such a claim, but on October 14, 1887, more than two years after the patent to the land had issued, he applied in the

local land office to make a homestead entry of the land. That proceeding was pending several years. Its pendency before a tribunal the jurisdiction of which over the land had terminated by the issue of the patent before the proceeding was instituted (*Bicknell v. Comstock*, 113 U. S. 149; *Germania Iron Company v. United States*, 165 U. S. 379) was without effect upon the title which the patent passed, but was evidence of the fact that whatever possession Wiley Terrell had was not under a claim of ownership, but only under a claim of a prior right to acquire ownership from the United States. In 1899 he made a homestead entry on a different 160 acres, a patent to which was issued to him. In 1902 or 1903 he made a verbal sale (what the sale was intended to embrace, whether all or a part of the land or only improvements on it, does not clearly appear) to one McCullough, who, before he made this purchase, had homesteaded 160 acres of land elsewhere and obtained a patent therefor. The sale to McCullough was followed by his going on the land and occupying some of it (the extent of the occupation was not clearly shown) in person or by tenants, until 1909, when he sold his improvements to one

345 Merchant, who never lived on the land, and who sold to one O'Niell, through transfers from whom one of the interveners acquired possession of part of the land, and the other acquired possession of another part of it. They also claim under a quit-claim deed made by their father, Wiley Terrell, after his transfer to McCullough and while the latter was in possession. During all this time the land was unenclosed, most of it being covered by virgin forest, and having not more than two small clearings on it, and was assessed for taxation to the successive holders of the record title, who paid taxes on it, and manifested their claim of ownership by such acts as might be expected of the owner of land mostly covered by virgin timber. It was not made to appear that either of the successive occupants asserted a claim different from the one asserted by Wiley Terrell.

The foregoing recital discloses several obstacles in the way of the maintenance of the claims asserted by and in behalf of the interveners. If the land in the hands of the patentee or its assigns was chargeable with a trust in favor of Wiley Terrell by reason of the fact that he, being an actual settler, had a right, made by statute superior to any possessed by the patentee, to acquire the land from the Government, that trust became enforceable not later than April 30, 1887. It seems that the claim, if it was not otherwise extinguished, must have become stale, or rendered unenforceable by laches, as a result of the unexplained delay of more than a quarter of a century in asserting it against the holder of the record title; and that in favor of the present holder of that title, which, presumably influenced by the apparent abandonment of the trust claim evidenced  
346 by the nonassertion of it during the immediately preceding twenty years, acquired that title in April, 1907, by paying a valuable consideration therefor, there is an estoppel on the interveners now to assert their claim. (*Osborne v. Altschul*, 101 Fed., 739;

Holt v. Murphy, 207 U. S., 407.) But if at any time Wiley Terrell was entitled to acquire the land in question by a homestead entry he relinquished that right in 1899 by homesteading other land. After he took that step he was without color of right to challenge the action of the Land Department in patenting the land in question to the New Orleans Pacific Railway Company, or to claim that that land continued to be held in trust for him or subject to his homestead right to it, and the rights of the patentee and its assigns took precedence of any subsequently arising claims by an occupant of a right to acquire the same land from the Government. (Love v. Flahive, 205 U. S., 195, 202; Moss v. Dowman, 82 Fed., 810.) The sale to McCullough in 1902 or 1903 did not have the effect of conferring such a right. The assignor did not possess it, as, if he had ever had it, he had lost it by abandoning it, and the assignee was disqualified to acquire it as a result of his having already exhausted his privilege of homesteading land. As the immediate predecessors of the interveners in the occupancy of the land did not possess the right claimed, their sales to the latter could not confer it on them. In short, the claims of the interveners are based upon asserted rights which if they ever existed, had by abandonment ceased to exist years before either of the interveners had any connection with the land in question. Neither the pleadings nor the evidence in the case furnish any support for a claim that a right to the land has been acquired by an adverse possession of it. It was not made to appear that the interveners have any right or title to be prejudicially affected by the decrees complained of.

As neither of the appellants has a just ground of complaint against that decree, it is affirmed.

Maxey, district judge, was prevented by illness from participating in the decision of this case.

(Original filed October 3rd, 1916.)

Præcipe for record. Filed March 26th, 1917.

In the United States Circuit Court of Appeals, Fifth Circuit.

THE UNITED STATES OF AMERICA AND MRS. JOSEPHINE  
Brown, appellants.

vs.

NEW ORLEANS PACIFIC RAILWAY COMPANY, W. R.  
Pickering Lumber Company, and River Land and  
Lumber Company, appellees.

No. 2864.

Præcipe for transcript.

*To the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit:*

Please prepare a transcript of appeal in the above case for use in the Supreme Court of the United States, said transcript to consist of the printed record filed in the United States Circuit Court

of Appeals, together with the opinion and judgment handed down by the said United States Circuit Court of Appeals, the minutes of said court, the petition for appeal and assignment of errors, the order of appeal, the appeal bond furnished by intervenor, the citation of appeal, and any other proceedings that may have been had in said cause in the United States Circuit Court of Appeals. Please also embody in said transcript the opinion of the United States Circuit Court of Appeals in the cause entitled United States of America, Newton B. Terrell, and Elijah W. Terrell, vs. New Orleans Pacific Railway Company and Gulf Lumber Company, No. 2871 on the docket of said court.

Thus done and signed this 16th day of March, 1917.

(Signed)

GEO. WHITFIELD JACK,  
*United States Attorney.*

ROBERT A. HUNTER,  
*Assistant United States Attorney.*

S. M. ATKINSON,  
*Solicitor for Intervenor.*

F. G. HUDSON, Jr.,  
*Solicitor for New Orleans Pac. Ry. Co.*

JAS. G. PALMER,  
*Solicitor for W. R. Pickering Lbr. Co.*

H. H. WHITE,  
*Solicitor for River Land & Lumber Co.*

Clerk's certificate.

United States of America. United States Circuit Court of Appeals,  
Fifth Circuit.

I, Frank H. Mortimer, clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 326 to 438 next preceding this certificate contain full, true, and complete copies of all the pleadings record entries, and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said court, numbered 2864, wherein the United States of America and Mrs. Josephine Brown are appellants, and New Orleans Pacific Railway Company, W. R. Pickering Lumber Company, and River Land and Lumber Company are appellees; and also of the opinion of said court in the cause entitled The United States of America, Newton B. Terrell and Elijah W. Terrell, appellants, vs. New Orleans Pacific Railway Company and Gulf Lumber Company, appellees, No. 2871 of the docket of said court, copied as directed in the precept for transcript, as full, true, and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 325 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.



In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals at my office, in the city of New Orleans, Louisiana, in the Fifth Circuit, this 26th day of March, A. D. 1917.

[SEAL.]

FRANK H. MORTIMER,

*Clerk of the United States Circuit Court of Appeals.*

350 THE UNITED STATES OF AMERICA,

*The President of the United States to New Orleans Pacific Railway Company, W. R. Pickering Lumber Company, and River Land & Lumber Company, greeting:*

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a petition and order of appeal sued out and filed in the clerk's office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein the United States of America and Mrs. Josephine Brown are appellants and you are appellees to show cause, if any there be, why the decree rendered against the said United States of America and Mrs. Josephine Brown and in said petition and order of appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 14th day of March, in the year of our Lord one thousand nine hundred and seventeen.

DON A. PARDEE,

*United States Circuit Judge.*

351 Service of the within citation of appeal is hereby acknowledged and accepted this 16th day of March, 1917.

F. G. HUDSON, Jr.,

*Solicitors for New Orleans Pacific Ry. Co.*

JAS. G. PALMER,

*Solicitor for the W. R. Pickering Lumber Co.*

H. H. WHITE,

*Solicitor for the River Land & Lumber Co.*

(Indorsed:) No. 2864. United States Circuit Court of Appeals, Fifth Circuit. The United States of America and Mrs. Josephine Brown, appellants, vs. New Orleans Pacific Railway Co., W. R. Pickering Lumber Co., and River Land & Lumber Co., appellees. Citation. U. S. Circuit Court of Appeals. Filed Mar. 26, 1917. Frank H. Mortimer, clerk.

(Indorsement on cover:)) File No. 25882. U. S. Circuit Court Appeals, 5th Circuit. Term No. 463. The United States of America and Mrs. Josephine Brown, appellants, vs. New Orleans Pacific Railway Company, W. R. Pickering Lumber Company, and River Land & Lumber Company. Filed April 4th, 1917. File No. 25882.